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APPENDIX

70-78

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~1001~~

AFFILIATED UTE CITIZENS OF THE STATE
OF UTAH, ET AL.,

Petitioners,

-v.-

UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED FEBRUARY 9, 1971
CERTIORARI GRANTED APRIL 19, 1971

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—v.—

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THE RELEVANT DOCKET ENTRIES IN THE PROCEEDINGS BELOW

February 17, 1965 – The Complaint of plaintiffs Reyos, et al. filed in the United States District Court for the District of Utah.

July 17, 1965 – Order dismissing the Reyos case as a class action signed by Judge Ritter.

May 10, 1966 – Third Amended Complaint of Reyos plaintiffs filed.

May 26, 1966 – Answer of defendants John B. Gale and Verl Haslem to Third Amended Complaint in Reyos filed.

May 26, 1966 – Answer of First Security Bank of Utah to Third Amended Complaint in Reyos filed.

June 17, 1966 – Answer of the defendant United States of America to Third Amended Complaint in Reyos filed.

July 13, 1967 – Pre Trial Order in Reyos signed by Judge Christensen.

October 3, 1967 through October 6, 1967 – Non jury trial in Reyos before Judge Christensen.

October 17, 1967 – Case in Reyos against defendant Richard Murray dismissed.

October 18 through October 20, 1967 – Non jury trial in Reyos before Judge Christensen continued.

November 3, 1967 – Reyos plaintiffs proposed Findings of Fact and Conclusions of Law filed.

December 15, 1967 – Proposed Findings of Fact and Conclusions of Law in Reyos of defendant First Security Bank, Gale and Haslem filed.

April 16, 1968 – Reyos plaintiffs response to objections to proposed Findings of Fact relating to damages filed.

April 18, 1968 – Proposed Findings of Fact and Conclusions of Law in Reyos of the defendant United States of America filed.

April 19, 1968 – Findings of Fact and Conclusions of Law in Reyos, signed by Judge Christensen, filed.

April 22, 1968 – Reply of Reyos plaintiffs to objections of defendants to plaintiffs proposed Findings of Fact and Conclusions of Law and response of plaintiffs to proposed Findings of Fact and Conclusions of Law of defendants filed.

April 25, 1968 – AUC Petition and Complaint filed.

May 10, 1968 – Motion to reopen in Reyos filed by defendants First Security Bank, Gale and Haslem together with Affidavit of Marvin J. Bertoch.

June 17, 1968 – Order in Reyos correcting proposed Findings of Fact signed by Judge Christensen filed.

June 17, 1968 – Motion to reopen in Reyos denied as to the Bank; additional testimony taken; taken under advisement as to defendant United States.

June 24, 1968 – Motion to dismiss in AUC filed by defendant United States, filed.

July 2, 1968 – Motion to Intervene in AUC as a defendant filed by the Ute Indian Tribe together with Intervenor's Answer.

July 5, 1968 – Motion to Intervene in AUC as a defendant filed by Ute Distribution Corporation together with Intervenor's Answer.

July 10, 1968 – Order of dismissal in AUC, signed by Judge Christensen, filed.

July 19, 1968 – Motion of AUC for rehearing, together with proposed Amended Complaint, filed.

August 7, 1968 – Order in AUC denying rehearing and denying leave to file amended complaint, filed.

August 30, 1968 – Notice of Appeal filed in AUC.

September 6, 1968 – Judgment in favor of Reyos plaintiffs and against defendant, First Security Bank, John B. Gale, Verl Haslem and the United States of America filed.

November 4, 1968 — Notice of Appeal filed by United States of America in Reyes.

November 5, 1968 — Notice of Appeal filed by First Security Bank, John B. Gale and Verl Haslem in Reyes.

December 2, 1968 — Motion of Reyes plaintiffs to extend time for filing notice of appeal filed together with notice of appeal.

December 17, 1968 — Order extending time for filing notice of appeal filed.

June 19, 1970 — Opinions of the Court of Appeals in AUC and Reyes simultaneously filed.

November 12, 1970 — Petition for rehearing in AUC and Reyes simultaneously denied.

December 29, 1970 — Minute entry in Reyes "Petition for Rehearing in Banc is untimely and should be 'received' but not filed' and given no further consideration (Seth)" entered.

Third Amended Complaint

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Leave of Court, being first had and obtained, plaintiffs amend their Amended Complaint and aver:

1. Each of the plaintiffs above named is a "mixed-blood" member of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, as defined by Section 677a(c) of Public Law 671, adopted by the 83rd Congress August 27, 1954, (68 Stat. 868 25, U.S.C. 677, et seq.) (sometimes referred to herein as "Public Law 671") and the regulations adopted pursuant thereto.

2. On or about December 9, 1958, a corporation known as "The Ute Distribution Corporation" (hereinafter sometimes referred to as "UDC" or "the Corporation") was organized under the laws of the State of Utah, pursuant to the express authorization of Public Law 671. The Articles of Incorporation of said UDC were authorized and approved by the Secretary of the Department of the Interior of defendant United States of America. Said corporation was organized to act as the authorized representative of the "mixed-blood" members of the Ute Indian Tribe of the Uintah and Ouray Reservation as defined in Public Law 671 and to hold and manage jointly with the Tribal Business Committee of the "full blood" group of said Indian Tribe, all gas, oil and mineral rights of every kind and all unadjudicated or unliquidated claims against the United States and all

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other assets not susceptible to equitable or practical distribution between said "mixed-blood" and "full blood" groups and the members thereof, and for the purpose of distributing the net proceeds therefrom to the stockholders of UDC. At incorporation, each of the "mixed-blood" members, including plaintiffs herein, was issued ten shares of the capital stock of said UDC.

3. At all times herein mentioned, plaintiffs and each of them, were wholly unsophisticated, inexperienced, and naive concerning the objectives, provisions and protection of Public Law 671 and the Articles of Incorporation of UDC, the extent, value and potential value of the assets

and claims assigned by the United States Government pursuant to Public Law 671 to UDC for distribution to plaintiffs, and the corresponding value of the capital stock of UDC. The United States Congress at the time of the enactment of Public Law 671, was fully aware of the lack of sophistication, inexperience and naivete of plaintiffs and provided in said Law certain safeguards for said plaintiffs.

4. Defendants John B. Gale (herein sometimes referred to as "Gale"), Verl Haslem (herein sometimes referred to as "Haslem") and Richard Murray (herein sometimes referred to as "Murray") are now and at all times mentioned herein were citizens of the United States and residents of Roosevelt, County of Duchesne State of Utah, and each of them was an active participant and aided and abetted other persons in the scheme described hereinunder.

5. Defendant First Security Bank of Utah, N.A. (hereinafter sometimes referred to as "Bank") is now and at all times hereinafter mentioned was a banking corporation organized and existing under and by virtue of the laws of the State of Utah,

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with principal offices in Salt Lake City, Utah, and branch offices located throughout the State of Utah, including an office at Roosevelt, Duchesne County, State of Utah. At all times herein mentioned, defendants John B. Gale and Verl Haslem were employed by, and officers of, Bank at Roosevelt, Utah; and in participating in the unlawful acts and in aiding and abetting other persons in the unlawful acts described hereinafter, said defendants Gale and Haslem were acting as agents and officers of Bank and within the scope of their authority and employment by Bank, said acts were performed by said Gale and Haslem with full knowledge and acquiescence of Bank and the acts of said defendants are chargeable to Bank and Bank is liable therefor.

6. By agreement, dated December 31, 1958, which said agreement was approved by the Secretary of the Department of the Interior, of the United States of America, defendant Bank was appointed registrar and transfer agent, depository and corporate adviser to UDC, and is now and at all times thereafter, has been so employed.

7. At some time after incorporation of UDC, certain and various persons, acting individually and in concert, and none of whom was either a "mixed-blood" or "full-blood"

within the definition of said terms set forth in Public Law 671, and said persons being well aware of the value and potential value of the assets and claims assigned and to be assigned by the United States to UDC for distribution to holders of UDC stock, of the value and potential value of the capital stock of UDC, and of the naïvete and lack of sophistication and experience of the "mixed-blood" members, concocted various schemes to acquire, and did acquire from plaintiffs shares of capital stock of UDC at prices below the fair and reasonable value thereof. In effecting said scheme and fraud, said persons:

(1) Made contact with each of the plaintiffs and advised them of the willingness of said persons to purchase UDC stock;

(2) Advised each plaintiff that only by following directions from said persons could such sale be consummated;

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(3) Made contact with each plaintiff individually, and not in a group, and never under circumstances when each plaintiff was likely to make independent inquiry concerning the representations made to him;

(4) Told each plaintiff that his UDC stock was of modest or nominal value;

(5) Told each plaintiff that said persons would pay each plaintiff what said stock was reasonably worth;

(6) Set out to gain and did, in fact, gain the confidence, reliance and trust of each such plaintiff;

(7) Deliberately withheld from each plaintiff the information said persons had acquired as to the fair value and great potential value of the UDC stock;

(8) Deliberately withheld from each plaintiff the fact known to said persons that certain substantial payments were to be paid by the United States to UDC and distributed to UDC stockholders;

(9) Obtained the signature of each plaintiff on a paper, which said paper was either blank or a printed form with operative figures and words uncompleted at the time of signing, and which said paper was thereafter completed or filled in by said persons in affidavit form whereon the rep-

resentation was made that such plaintiff had received the cash price for which the said stock had been advertised for sale to other Ute Indians as provided by Public Law 671 and the UDC Articles of Incorporation;

(10) Personally notarized or obtained the notarization from others of the signature of said plaintiff on a sworn statement that such plaintiff had "personally appeared before" said notary and had acknowledged receipt of the price for which the said stock had been advertised for sale; when in truth and in fact, such plaintiff did not so appear and was not so

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sworn and had not then and did not thereafter receive the consideration stated;

(11) Then paid in cash or other consideration, including interest in used automobiles, interests in real estate and other non-cash consideration to each plaintiff, such cash sum or other consideration and only such cash sum or other consideration as said persons felt was absolutely necessary in order to avoid resistance from each plaintiff, which said sum was less in value and different in kind, or both, than as advertised and certified as having been given;

(12) Obtained signature guarantees by Bank through its agents, Haslem and Gale;

(13) Thereafter delivered said affidavits and certifications through the United States mails to the stock transfer department of Bank at Salt Lake City, Utah; and

(14) Obtained transfer on the stock records of UDC to said persons or a nominee or assignee.

8. Each of the plaintiffs above named sold certain of his shares of UDC prior to August 27, 1964, to various persons without receiving therefor the fair and reasonable value of said shares. The number of shares sold by each of the plaintiffs above named is as follows:

* * *

As to defendants Bank, Gale, Haslem and Murray, plaintiffs allege:

9. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 8 hereinabove as if fully set forth hereat.

10. The acts described in paragraph 7 hereinabove constitute a violation of the pros-

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criptions of legislative enactment, namely Section 10(b) of the Securities Exchange Act of 1934 (Title 15, U.S.C. section 78(j)) and Rule 10b-5 (17) C.F.R. 240 10b-5) promulgated by the United States Securities and Exchange Commission by virtue of the authority vested in said Commission by the said Act and plaintiffs' First Count is based solely on said statute and rule.

11. Said UDC capital stock constituted a "security" within the meaning and intent of said Section 10(b) of the Securities Exchange Act and the regulations adopted pursuant thereto as defined by Section 78c(a)(10) (15 U.S.C.).

12. By reason of the conduct of Bank, Gale, Haslem and Murray, as aforesaid, plaintiffs have been required to engage legal counsel. The cost of such legal services constitutes actual damages within the intent and meaning of the Securities and Exchange Act and was proximately caused and is attributable to the said defendants' conduct and plaintiffs are entitled to an award of a reasonable sum therefor.

Second Count

As to defendants Bank and United States of America, plaintiffs allege:

13. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 8 inclusive hereinabove as if fully set forth hereat.

14. Jurisdiction of this Court as to the defendant United States [and First Security Bank (initials illegible) 7/12/67 (handwritten interlineation)] exists by reason of the provisions of Title 28, U.S.C., Sections 1331 and 1346(b). The matters in [as to each Plaintiff (initials illegible) (handwritten interlineation)] exceed the sum or value of \$10,000, exclusive of interest or costs. Jurisdiction of this Court over the person of defendant Bank and the subject matter of the claim against Bank exists by reason of Section 1331 of Title 28 U.S.C.

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Plaintiffs' Second Count is based upon and arises from the same facts and cause as plaintiffs' First Count, based solely upon Section 10(b) (Title 15, U.S.C. Section 78(j)) and Rule 10b-5 (17 C.F.R. 240 10b-5) and jurisdiction of this Court over the claim against Bank and over the person of Bank as set forth in plaintiffs' Second Count, exists also by virtue of this Court's pendent jurisdiction. Venue is properly laid in this District by reason of the fact that the acts of defendants complained of herein occurred within the State of Utah.

15. By reason of the provisions of Public Law 671, the United States Congress granted broad authority to and imposed correspondingly broad duties upon the Secretary of the Department of the Interior of the United States of America, respecting the protection and preservation of the property rights of the "mixed-blood" members prior to termination of federal supervision over their property. In exercise and implementation of said authority and discharge of said duties, the Secretary of the Department of Interior of the United States of America adopted certain regulations and rules, including the approval of the Articles of Incorporation of UDC and all provisions contained therein, forms and procedure for advertising shares of UDC capital stock for sale and assuring that each "mixed-blood" received fair value therefor and that the provisions of Public Law 671 and the Articles of Incorporation of UDC were fully effected.

16. Certain of the said duties were delegated, directly or indirectly by defendant United States to Bank, or were, with the approval and acquiescence of the United States, assumed or arrogated by Bank. Bank further, by reason of the said agreement of December 31, 1959, and various other writings, and the conduct of its officers and its agents including defendants Gale and Haslem, assumed the duty to protect, and at all times thereafter held itself out as protecting the property rights of plaintiffs in and to their shares of UDC stock.

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17. By reason of the said actions of defendant United States and its authorized agents in effecting the provisions of Public Law 671, each of the plaintiffs were led to rely and did rely upon the United States and Bank to fully protect him in his property rights in and to UDC stock.

18. Certain agents and employees of defendant United States, United States Department of Interior, Bureau of Indian Affairs, and residents of Duchesne County, State of Utah and

of Bank were at all times herein mentioned personally acquainted with plaintiffs and with defendants Gale, Haslem and Murray and other persons who were actively engaged in the purchase of UDC stock either for themselves individually, or as agents for other persons both within and without the State of Utah, and said agents and employees of United States and Bank, knew, or by reasonable process of inquiry, should have known, that purchases of UDC stock by said persons were accomplished by means of devices and methods referred to in paragraph 7 hereinabove.

19. Defendant United States, acting by and through its agents and employees of the United States Department of the Interior, Bureau of Indian Affairs, acting within the scope of their office and employment and in pursuit of their authority and duty as defined by Public Law 671 and the regulations adopted pursuant thereto, and defendant Bank acting by and through its agents and employees and pursuant to the arrangements and understandings described in paragraph 15 hereinabove, negligently permitted the acquisition of plaintiffs' shares of capital stock of UDC and negligently omitted to protect and preserve plaintiffs' rights in said shares in that they:

(1) Failed to require that transfer of UDC stock be performed in strict compliance with the provisions of Public Law 671 and the regulations adopted pursuant thereto, including in particular, the regulations of the Articles of Incorporation of UDC which were adopted pursuant to the provisions of Public [384]

Law 671 and approved by the Secretary of the Interior;

(2) Supplied forms and documents for the purpose of effecting transfer of UDC stock with the knowledge and intent that said documents and forms would be used for said purpose;

(3) Certified and represented that full consideration was received for the transfer of UDC stock and that all of the provisions of the applicable federal laws and regulations including the regulations of the UDC Articles of Incorporation had been complied with, as required by Public Law 671 and the regulations adopted thereto, when in truth and in fact, full consideration in the amount and of the kind (cash) for which said stock was advertised with the Indian Agency, was not received by the transferor and said defendants knew, or by reasonable and appropriate inquiry should have known of said fact;

(4) Failed to require that the certification referred to in subparagraph (3) hereinabove be "stamped" on the UDC certificate involved, notwithstanding that such certification on the stock certificate was expressly required by the Articles of Incorporation of UDC;

(5) Having notice of some, or all of the matters referred to in paragraph 7 hereinabove, failed to conduct reasonable and appropriate inquiries as to the rights in relation to said matters and to take reasonable and appropriate steps, including inquiry of each individual "mixed-blood" at the time documents of transfer were presented to said Bank and United States to determine whether the requirements of Public Law 671 and the requirements adopted pursuant thereto had been complied with;

(6) Wholly neglected to advise and counsel plaintiffs against the schemes described in paragraph 7 hereinabove;

(7) Permitted the transfer of capital stock of UDC prior to August 27, 1964, to persons other than members of the Ute Indian Tribe as defined in Public Law 671 without requiring that a prior offer to sell be made to the members of said Tribe and in violation of the express proscriptions

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of the Articles of Incorporation of UDC and the limitations stamped on every UDC stock certificate.

(8) Permitted the transfer of shares of UDC stock to other persons without determining, or attempting to determine, whether any consideration of any kind had been received by plaintiffs therefor.

20. By reason of the negligence and violation of statutory enactment of defendant United States, defendant Bank, each of the plaintiffs has been deprived of certain of his shares of capital stock of UDC at a consideration far less than the reasonable value of said securities.

Wherefore, plaintiffs pray judgment that this Court make and enter an order declaring all sales or transfers of capital stock of Ute Distribution Corporation from plaintiffs to non Ute or "mixed-blood" Indians prior to August 27, 1964, as being void; for a money judgment against defendants and each of them for the difference between the value of the con-

sideration actually received by plaintiffs in exchange for their said securities and the fair value thereof; against defendants Bank, Gale and Haslem and Murray for the amount of a reasonable sum as attorneys' fees; for plaintiffs' costs and disbursements incurred herein and for such other and further relief as may appear justified in the premises.

Dated this 6th day of May, 1966.

Adam M. Duncan
Parker M. Nielson

Attorneys for Plaintiffs

Filed May 10, 1966

* * * * *

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Answer Of First Security Bank Of Utah, N.A.
To Third Amended Complaint

Comes now the defendant First Security Bank of Utah, N.A., and for answer to plaintiffs' third amended complaint admits, denies and alleges as follows:

First Defense

Plaintiffs fail to state a claim upon which relief can be granted.

Second Defense

The Court has no jurisdiction over the second count of the complaint with respect to First Security Bank of Utah, N.A.

Third Defense

1. Answering paragraphs 1 and 2, this defendant does not have sufficient information upon which to form a belief as to the truthfulness of the allegations contained therein, and therefore denies the same.

2. Answering paragraph 3, this defendant denies each and every allegation contained therein.

3. Answering paragraph 4, this defendant admits that John B. Gale and Verl Haslem are now and at all times mentioned herein were citizens of the United States and residents of Roosevelt, County of Duchesne, State of Utah. This defendant denies each and every

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other allegation contained in said paragraph 4.

4. Answering paragraph 5, this defendant admits that First Security Bank of Utah, N.A. is now, and at all times hereinafter mentioned was a banking corporation with principal offices in Salt Lake City, Utah, and branch offices located throughout the State of Utah, including an office at Roosevelt, Duchesne County, State of Utah. This defendant further admits that at all times mentioned in the complaint, defendants John B. Gale and Verl Haslem were employed by the First Security Bank of Utah at Roosevelt, Utah. This defendant denies each and every other allegation contained in paragraph 5.

5. Answering paragraph 6, this defendant admits that by agreement, dated December 31, 1958, which said agreement was approved by the Secretary of the Department of Interior of the United States of America, the defendant bank was appointed registrar and transfer agent. Defendant denies each and every other allegation contained in said paragraph 6.

6. Answering paragraphs 7 and 8, this defendant denies each and every allegation contained therein.

7. Answering paragraph 9, this defendant answers by reasserting its answers to paragraphs 1 through 8 as heretofore set forth.

8. Answering paragraphs 10, 11 and 12, this defendant denies each and every allegation contained therein.

9. Answering paragraph 13, this defendant reasserts and realleges its answers to paragraphs 1 through 8 inclusive, as hereinabove set forth.

10. Answering paragraphs 14, 15, 16, 17, 18, 19 and 20, this defendant denies each and every allegation contained therein.

Wherefore, this defendant prays that plaintiffs take

nothing

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by reason of their third amended complaint; that the same be dismissed; and that this defendant have and recover its costs incurred herein.

Ray, Quinney & Nebeker

By Marvin J. Bertoch

Attorneys for Defendant First
Security Bank of Utah, N.A.

Filed May 26, 1966

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Answer To Third Amended Complaint

The defendant, United States of America, answers the plaintiffs' Third Amended Complaint as follows:

First Defense

The complaint fails to state a claim against the United States upon which relief can be granted.

Second Defense

The defendant denies that this Court has been granted jurisdiction by 28 U.S.C. 1331 or 1346(b), or by any other statute.

Third Defense

1-This defendant denies all of the allegations found in Paragraphs 1,3,7,14,15,16,17,18,19 and 20 of the Complaint.

2-This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 4,5,8,10,11 and 12 of the Complaint. For this reason, said paragraphs are denied.

3-Answering Paragraph 2 of the Complaint, this defendant denies that each of the plaintiffs received ten shares of stock in the Ute Distribution Corporation, but admits all of the other allegations found in said paragraph.

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4-Answering Paragraph 6 of the Complaint, this defendant denies that the Secretary of Interior approved the Agency Agreement between the Ute Distribution Corporation and the First Security Bank of Utah, but admits all of the other allegations found in said paragraph.

5-Paragraphs 9 and 13 of the Complaint are otherwise answered herein and no separate answers to these paragraphs are required.

Fourth Defense

This defendant sets forth the following affirmative defenses to plaintiffs' Complaint.

1- The claims of some of the plaintiffs are barred by the statute of limitations as set forth in 28 United States Code, Section 2401(b).

2- The plaintiffs have failed to join certain indispensable parties to this action.

2-A The acts or omissions of Government agents relied on by the plaintiffs in this action fall within the purview of the Discretionary Function Exception to the Federal Tort Claims Act, as set forth in 28 United States Code, Section 2680.

3- The agents and employees of the United States were not acting within the scope of their employment when the alleged negligence occurred.

4- The negligence of the agents and employees of the United States, if any, was not the proximate cause of the damages incurred by the plaintiffs.

5- The damages claimed by the plaintiffs, if any, resulted from their own negligence.

6- The negligence of the plaintiffs was the proximate cause of the damages alleged in the Complaint.

7- The plaintiffs knowingly and willfully participated in the fraud described in the Complaint, and said plaintiffs

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engaged in a conspiracy with other persons to circumvent the purposes and requirements of the statutes and regulations of the United States as they pertain to the sale of stock in the Ute Distribution Corporation. In particular, said plaintiffs knowingly executed and delivered false affidavits and made false statements to the representatives of the Bureau of Indian Affairs pertaining to the sale of said stock.

8- Pursuant to provisions of Public Law 671, as set forth in 25 United States Code, Section 677(v), the Federal supervision over the mixed-blood Indians of the Ute Indian Tribe was terminated on August 27, 1961 by proclamation of the Secretary of the Interior. Thereafter, the plaintiffs were not entitled to any of the services given to Indians because of their status as Indians. Therefore, subsequent to August 27, 1961, the defendant United States of America owed no duty to the mixed-bloods which would give rise to liability under the provisions of the Federal Tort Claims Act, or any other statute of the United States.

Wherefore, this defendant prays that the plaintiffs' Complaint insofar as it pertains to the United States of America be dismissed, and that this defendant be awarded its costs incurred in connection herewith.

Dated this 17th day of June, 1966.

H. Ralph Klemm
Assistant United States Attorney
Attorney for Defendant United
States of America

Filed June 17, 1966

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Pre-Trial Order

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This case came on for pretrial on the 12th day of July, 1967, before the Honorable A. Sherman Christensen, United States District Judge, pursuant to Rule 16 of the Federal Rules of Civil Procedure; Adam M. Duncan, Esq. and Parker M. Nielson, Esq. appeared as counsel for plaintiffs, Marvin J. Bertoch, Esq. of Ray, Quinney & Nebeker, appeared as counsel for defendants First Security Bank, John B. Gale and Verl Haslem, H. Ralph Klemm, Esq., Assistant United States Attorney, appeared for defendant United States of America, and Ford R. Paulson, Esq., appeared as counsel for defendant Richard Murray.

I. Jurisdiction

A. Plaintiffs' First Count against defendants First Security Bank, Gale, Haslem and Murray is based on alleged violations by these defendants of provisions of the Securities Exchange Act of 1934 and Rule 10b-5 (17 C.F.R. 240 (10b-5) promulgated by the United States Securities and Exchange Commission or are pendent to claims based solely on provisions of said Act and Rule. Jurisdiction of the Court is invoked under and venue is based upon Section 27 of the Securities Exchange Act of 1934 (Title 15 U.S.C.A., Section 78aa). Jurisdiction and venue of the Court over the person of defendant

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United States of America and over plaintiffs' claim against said defendant is based upon the provisions of Title 28 [U.S.C. ASC 7/12/67 (handwritten notations)]. U.S.C. Sections 1331 and 1346b. [MJB HRK AMD FRP (handwritten notations)]

B. Defendants contend that 28 U.S.C. 1331 does not provide jurisdiction over the subject matter of the action.

C. With respect to defendant United States of America, jurisdiction and venue are hereby determined to be present over the person of that defendant and the subject matter involving that defendant, except for the basic contentions of the defendant reserved in the following contested issues of fact and law.

D. Jurisdiction and venue of the Court over the person of defendant First Security Bank and over plaintiffs' claim against said defendant with respect to the Second Count of the complaint are based on the principle that the Second Count is pendent to plaintiffs' First Count, which is based solely upon the Securities Exchange Act of 1934, Section 28 (15 U.S.C. 78aa).

E. With respect to the defendants First Security Bank, Gale, Haslem and Murray, jurisdiction is hereby determined to be present over the persons of these defendants, and each of them, and over the subject matter, subject to the contingency that the Court may in the course of trial find that the plaintiffs' First Cause of Action is not sufficiently substantial to enable the Court to retain jurisdiction of the Second Cause of Action on the theory of pendent jurisdiction as to defendant First Security

II. General Nature Of The Claims Of The Parties

A. Plaintiffs' Claim:

- (1) As to defendants Bank, Gale, Haslem and Murray:

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(a) In their First Count (against defendants First Security Bank, Gale, Haslem and Murray), that these defendants, in connection with the purchase from plaintiffs of shares of stock of the Ute Distribution Corporation, by defendants Gale, Haslem and Murray and others, either directly, or in aiding and abetting others, violated Section 10(b) and Section 29(b) of the Securities Exchange Act of 1934 (15 U.S.C., 78, and 78cc) and Rule 10b-5 (17 C.F.R. 240-10b-5).

(b) In their Second Count (against defendants First Security Bank and the United States) that these defendants were negligent in discharging their statutory, contractual and assumed duties to protect plaintiffs in connection with the purchase, sale or transfer of plaintiffs' shares of capital stock of Ute Distribution Corporation and that plaintiffs prior to August 27, 1967, were not sui juris and cannot be charged with contributory negligence.

- (2) As to defendant United States of America:

(a) That plaintiffs were wards of the government as to their Ute Distribution Corporation stock, and that the United States failed to exercise its duty to protect and supervise their sales of Ute Distribution Corporation stock prior to August 27, 1964;

(3) Plaintiffs claim that they are entitled to an award of reasonable attorney fees as a separate element of damages under the Utah Securities Act and the doctrine of pendent jurisdiction.

B. Defendants' Claim:

(1) Respecting plaintiffs' First Count, that none of the defendants violated any provisions of the Securities and Exchange Act or of Rule 10b-5.

(2) Respecting plaintiffs' Second Count that none of the defendants owed any duty to the plaintiffs to safeguard or protect

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them with respect to the consideration paid or given for their stock; that none of the defendants was negligent; that plaintiffs were contributorily negligent; that the negligence, if any of the defendants, or any of them, was not the proximate cause of any loss sustained by the plaintiffs; that plaintiffs sustained no loss; that the claims against the defendant United States of America are barred by the statute of limitations and the discretionary function exception to the Federal Tort Claims Act.

III. Trial Procedure

The plaintiffs are some 85 individuals. The claims of each of the plaintiffs involve a number of common questions of both law and fact. In order to facilitate trial procedure, counsel have agreed that plaintiffs shall choose four six cases and the defendants collectively shall choose four six cases, and the cases selected involve the following plaintiffs: [Corrections initialed: MJB AMD FRP MJB HRK AMD]

Plaintiffs designate:

- HRK 1. [Glen Reed P.M.N.
 2. [Fred Burson P.M.N.

- AMD 3. [Letha Wopsock P.M.N.]
MJB 4. [Louise A. Case P.M.N.]
[5. Melvin Reed P.M.N.]
[6. Marguerite M. Hendricks P.M.N. (handwritten)]

Defendant United States of America designates:

1. Joseph Arthur Workman
2. Leonard Richard Burson

Defendants First Security Bank, Gale and Haslem designate:

1. Oran F. Curry
2. Stewart Eugene Reed

Defendant Murray waives designation. [designates: MJB (handwritten correction)]

- AMD 1. (illegible)
MJB 2. Richard Henry Curry and Charles T. Reed B G Per
ASC 7/25/67 MJB AMD FRP MJB HRK (handwritten notations)]

The initial trial proceedings, to the Court sitting without a jury, are to proceed with respect to the claims of said eight twelve [MJB (handwritten)] plaintiffs. (Reference is made to the "bellwether" procedure employed by this Court in trial of multiple-claim litigation in Ranchers Exploration & Development Company v. Anaconda, 248 Fed. Supp. 708 (1965).)

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The trial herein will proceed initially to determination of the claims of the eight twelve [HRK AMD MJB FRP (handwritten)] designated plaintiffs. No party hereto shall, however, be limited or restricted in the proof of any fact, or the introduction of any evidence relating to the entire subject matter of this cause which may be material to the determination of the rights of the designated parties. All evidence adduced in the initial proceedings involving the rights of the designated parties shall be deemed admitted in and part of any subsequent proceedings herein involving disposition of the claims of the remaining plaintiffs, provided, however, that none of the parties shall be foreclosed in any such subsequent proceedings from introducing additional or further evidence.

IV. Uncontroverted Facts

The following facts are established by admissions in the pleadings or by stipulation of counsel subject to ruling

by the Court at the time of trial as to their relevance or materiality:

A. Ute Distribution Corporation was incorporated under the laws of the State of Utah and its corporate charter issued on or about December 9, 1958, and said corporation is now and at all times since incorporation has been a corporation validly existing under the laws of the State of Utah.

B. At all times pertinent to the claims of plaintiffs herein,

(1) Defendant First Security Bank of Utah,

(a) was a corporation organized under the laws of the United States;

(b) was transfer agent of and for the capital stock of Ute Distribution Corporation;

(c) was a signatory to and bound by the terms of a certain agreement dated December 31, 1958;

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(d) held in its main office in Salt Lake City, Utah possession of the issued Ute Distribution Corporation stock certificates of the plaintiffs prior to transfer thereof;

(e) maintained an office at Roosevelt, Utah.

(2) Defendant Gale was at all times pertinent to this action employed by the First Security Bank of Utah at its Roosevelt office as Assistant Manager.

(3) Defendant Haslem was at all times pertinent to this action employed by the First Security Bank of Utah at its Roosevelt office as Assistant Manager.

C. Each of the designated plaintiffs was, prior to enactment of Public Law 671, adopted by the 83rd Congress on August 27, 1954 (68 Stat. 868, 25 U.S.C. 677, et seq.) a member of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah.

D. By reason of the enactment and implementation of Public Law 671, each of the designated plaintiffs was a so-called "mixed-blood" member of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah.

E. Each of the designated plaintiffs was issued 10 shares of capital stock of Ute Distribution Corporation.

F. Certain shares of the capital stock of Ute Distribution Corporation, theretofore owned by each of the designated plaintiffs were transferred on the transfer records of Ute Distribution Corporation by defendant First Security Bank prior to August 27, 1964.

G. The Articles of Incorporation of Ute Distribution Corporation were approved by the United States prior to their adoption.

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V. Contested Issues Of Fact And Mixed Questions Of Fact And Law

The contested issues of fact or mixed questions of fact and law remaining for decision are:

(1) Did defendants, First Security Bank, Gale, Haslem and Murray, or each or any of them, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, in connection with the purchase or sale of shares of capital stock of Ute Distribution Corporation,

(a) Employ any device, scheme or artifice to defraud the plaintiffs; or

(b) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading to the plaintiffs; or

(c) Engage in any act, practice or course of business which operated or would operate as a fraud or deceit upon the plaintiffs; or

(d) Use or employ any manipulative or deceptive device or contrivance upon the plaintiffs; or

(e) Aid or abet each other or any other person in violating any provision of Section 10 of the Securities and Exchange Act of 1934 or Rule 10b-5?

(2) If so, what damages, if any were sustained by plaintiffs by reason thereof?

(3) Did defendants First Security Bank and United States of America, or each or either of them, owe any duty to plaintiffs herein to protect or safeguard them with respect to the consideration paid or given for their stock

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(a) By reason of Public Law 671?

(b) By reason of contract?

(c) By reason of "holding out" or assuming to act in their behalf?

(4) If so, did these defendants, or either of them, breach such duty?

(5) If so, was such breach a proximate cause of the loss, if any, suffered by the designated plaintiffs?

(6) If so, what damages, if any, were sustained by plaintiffs by reason thereof?

(7) If damages were sustained by the plaintiffs, or any of them, were said plaintiffs, or any of them, contributorily negligent, and if so, does such negligence bar recovery?

(8) Were the claims of any of said plaintiffs barred by the statute of limitations? 8

(9) Were the employees of the defendant: First Security Bank of Utah and United States of America acting within the scope of their employment in connection with the acts or omissions complained of by the plaintiffs?

[ASC 7/12/67 (Handwritten)]

(10) / [If allowable MJB HRK AMD FRP (Handwritten)]
What is a reasonable attorneys' fee to be awarded plaintiffs for the use and benefit of their legal counsel?

[Initials illegible] [11. Does the claim of each plaintiff as to Count 2 exceed \$10,000 exclusive of interest and costs. MJB HRK AMD FRP (Handwritten)] ASC 7/12/67

VI. Contested Issues Of Law

The contested issues of law, in addition to those implicit in the foregoing Contested Issues of Fact and Mixed Questions of Fact and Law are:

(1) Did defendants First Security Bank and United States of America, or each or either of them, owe any duty to the plaintiffs to protect or safeguard them with respect to the consideration paid or given for their stock.

(a) By reason of Public Law 671?

[(a-) Did Public Law 671 and its authorized (word illegible) and the (word illegible) relationship between the plaintiffs and the Government? MJB HRK AMD FRP (Hand-written)]

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(b) By reason of contract?

(c) By reason of "holding out" or assuming to act in their behalf?

(2) Were plaintiffs, or any of them, sui juris in relation to the issue of contributory negligence with respect to the purchase, sale or transfer of their shares of capital stock of Ute Distribution Corporation prior to August 27, 1964?

(3) Is the award of attorneys' fees allowable in an action based on violation of Section 10b of the Securities Exchange Act of 1934 or Rule 10b-5, or under the Utah Securities Act?

(4) Are the plaintiffs entitled to have the transfers involved declared null and void?

(5) What legal effect, if any, is attributable to the approval by the Secretary of Interior of the Articles of Incorporation of the Ute Distribution Corporation?

(6) Do the acts or omissions relied on by the plaintiffs for recovery against defendant United States of America fall within the purview of the discretionary function exception of the Federal Tort Claims Act, as set forth in 28 U.S.C. 2680a?

(7) Are the claims of the plaintiffs based upon acts or omissions of agents or employees of the United States of

America exercising due care in the execution of the statutes and regulations of the United States?

(8) Are the claims of the plaintiffs barred by the exceptions to the Federal Tort Claims Act set forth in 28 U.S.C. 2680h?

(9) Did the proclamation of the Secretary of Interior as published in the Federal Register on August 27, 1961, terminate the federal trust relationship existing between the defendant United States of America and the plaintiffs?

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(10) If it is determined by the Court there was no violation of the Securities and Exchange Act in connection with the sale of the plaintiffs' stock, does that eliminate any negligence and, therefore, liability on the part of the defendant United States of America?

(11) Have plaintiffs failed to join certain indispensable parties to this action, to-wit: the present owners of the stock?

(12) -- Are the plaintiffs entitled to recover attorneys' fees against the defendant United States of America under the Federal Tort Claims Act?

[12- Aside from jurisdictional foundations of Count 2 as founded on the SEC Act, (words illegible) do the allegations of Count 2 as amended state a jurisdictionally (word illegible) federal claim arising under Public Law 671 (25 USC 677).

[12A- Does Count 2 as amended present a federal question for jurisdiction purposes (initials illegible) 7/12/67 MJB FRP HRK AMD MJB HRK)]

VII. Exhibits

The parties were directed to identify for opposing counsel all exhibits which they intend to offer at the trial and to cause such exhibits to be filed with and marked by the Clerk of the Court on or before ten days prior to date of trial. If the respective parties desire to interpose objections to any of said exhibits on any ground except materiality or relevancy, such objections must be made in writing, served upon counsel and filed with the Court on or before five days prior to date of trial.

Exhibits so marked, together with all depositions which have been filed in this matter, including all exhibits attached thereto may be withdrawn upon receipt by counsel of record, to be returned to the office of the Clerk within a reasonable period of time.

[VII-A

Parties shall give & serve notice of the witnesses they propose to call at least 10 days prior to the time of trial, in accordance with the Court's usual P/T form. Agreed to by parties ASC 7/12/67 AMD MJB FRP HRK (Handwritten insertion)]

VIII. Amendments To Pleadings

No further amendments to the respective pleadings on file in this matter may be made without the approval of the Court made in the manifest interests of justice.

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IX. Discovery

The parties may continue reasonable discovery, providing that the continuation of the discovery process shall not cause a change in the trial setting or a delay in the trial of this matter.

X. Other Matters

The inclusions of any document or fact in Paragraph IV of this Pretrial Order designated "Uncontroverted Facts" shall not foreclose either party from offering such documents or evidence of such facts at trial and supplemental or explanatory documents, provided that evidence clearly repugnant and inconsistent with any statement set forth thereat may not be offered unless the offering party is relieved of said stipulation upon consent of the parties and the Court or by order of the Court to prevent manifest injustice.

XI. Modifications - Interpretations

This Pretrial Order has been formulated after conference at which counsel for the respective parties have appeared. Reasonable opportunity has been afforded counsel for corrections or additions prior to signing by the Court. Hereafter, this Order will control the course of the trial

and may not be amended except by consent of the parties and the Court or by order of the Court to prevent manifest injustice. The pleadings will be deemed merged herein. In the event of ambiguity in any provisions of this Order, reference may be made to the record of this conference to the extent reported by stenographic notes and to the pleadings.

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XII. Trial Setting

Initial trial proceedings relating to the claims of the designated representative parties, as provided in Paragraph III hereinabove, shall commence on [Oct 3, 1967 at 10 AM MJB FRP HRK (handwritten)] to the Court sitting without a jury. Estimated time of trial of said issues is four days. Counsel for the parties, after discussion, advise the Court that settlement possibilities appear unfavorable.

Made and entered this 12 day of July, 1967.

By The Court:

A. Sherman Christenson

United States District
Judge

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The foregoing proposed pretrial order is hereby approved this 12 day of July, 1967.

Adam M. Duncan by P.M.N.

Attorney for Plaintiffs

Marvin J. Bertoch

Attorney for Defendants

First Security Bank of Utah

John B. Gale and Verl Haslem

H. Ralph Klemm

Assistant United States Attorney

Ford R. Paulson

Filed July 12, 1967

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TRANSCRIPT OF PROCEEDINGS IN RE YOS

LETHA HARRIS WOPSOCK called as a witness in her own behalf, being first duly sworn, testified as follows:

* * * * *
DIRECT EXAMINATION BY MR. NIELSON

Q. Mrs. Wopsock, will you state your name, please. A. Letha Harris Wopsock.

Q. Could I get you to talk to where I am over here. Where do you reside, Mrs. Wopsock? A. Whiterocks, Utah.

Q. Was your name published on the mixed-blood rolls of the Uintah Indian Tribe of the Uintah and Ouray Indian reservation? A. Yes, sir.

Q. What degree of Indian blood do you have, Mrs. Wopsock? A. Three-fourths.

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Q. Three-fourths Indian? A. Yes, sir.

Q. Is that all Ute blood? A. Ute blood, yes, sir.

Q. Three-fourths Ute. Mrs. Wopsock, did you receive ten shares of stock in the Ute Distribution Corporation? A. Yes, sir, I did.

Q. And that was pursuant to the Termination Act which termination--the termination procedure which started in 1954; is that correct? A. Yes, sir.

Q. When you received that stock, Mrs. Wopsock, how were you notified that you had ten shares of stock in this corporation? A. I wasn't. They just--I just heard that just from others. They've had meetings, but I never did go to any of the meetings.

Q. Well, did you get a stock certificate in the mail? A. No, sir, I didn't.

Q. Did you get some sort of a letter telling you that you had ten shares of stock? A. No, sir, I didn't.

Q. Then you just knew it by rumor, is that right? A. Yes, sir.

* * * * *
Q. (By Mr. Nielson) How many shares of stock did you have in this corporation? A. My own, or inherited?

Q. Well, all of them that you owned at any time. A. Well, I, let me see, I have ten of my own, and I received five from my mother.

Q. So that's a total of fifteen shares? A. Yes, sir.

Q. When did you sell your first shares--well, let me withdraw that question and put it this way, Mrs. Wopsock. Did you at some time after you became aware that you had shares in this corporation cause the shares to be noticed for sale with the tribe out at Fort Duchesne? A. No, sir, I didn't.

Q. You didn't? A. No, I didn't.

Q. Mrs. Wopsock, I'm going to show you some documents

which are compiled in an exhibit which is numbered 3A and which purport to be all of the pertinent copies of all of the pertinent documents relative to your shares. I'll show you, first of all, a copy of a stock certificate bearing No. 467 for ten shares, and the stock here has your name on it. Have you ever seen that stock certificate before?

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A. I don't remember. I don't think I did.

Q. You don't think you did? A. I can't remember.

* * * *

Q. (By Mr. Nielson) Now, Mrs. Wopsock, the next document in this file is--let me refer, first of all, before turning from the stock certificate, at the bottom of the stock certificate there is some printing under the words "Warning." Have you ever seen that printing before, Mrs. Wopsock? A. No, sir.

Q. If I may direct your attention to the specimen certificate which has now been received in evidence, you'll

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note that the warning is printed in red? A. Yes, sir.

Q. Have you ever seen that at all? A. No, sir.

Q. Has anyone ever read that to you? A. No, sir.

Q. Turning to the next document, there is a document in the file entitled, "Offer to Sell," and it's dated September 3, 1963, and it purports to bear your signature. Is that your signature? A. Yes, sir.

Q. I'll ask you, Mrs. Wopsock, if you can recall, to describe for me the circumstances under which you signed that offer to sell. It's dated September 3, 1963. It has your signature and the words, "Whiterocks, Utah," under the signature. A. I don't know.

THE COURT: Pardon me. You'll have to speak louder. What did you say?

A. I want to know if this was the first one I sold was to Clyde Murray.

Q. (By Mr. Nielson) Well, was your sale to Clyde Murray sometime after September 3 of 1963? A. I sold to him around about the first of August.

* * * *

Q. About the first of August? A. Yes, sir.

Q. In 1963? A. Yes, sir.

Q. All right. But do you remember signing this document entitled, "Offer to Sell"? A. I remember signing it.

Q. All right. Will you tell me how you came to sign that document? A. This is offering to sell?

Q. Yes. A. Well, I went in to Mrs. Logan.

Q. You say Mrs. Logan. Is that the realty officer at the Uintah and Ouray agency? A. Yes, sir.

Q. All right. Go on. A. And I asked her how they done that. I said I wanted to sell. And she told me that you have to fill these forms out and then advertise. And she asked me how much I was going to advertise for, and I told her, well, I didn't really know; that someone had told me all they could get \$500 stock, for one stock. So I thought that's what I'd

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advertise for.

Q. And so your offer to sell was for the sum of \$2,500?

A. Yes, sir.

Q. And that was for five shares? A. Yes, sir.

Q. All right. Now, had you talked to anyone about selling your shares before you went out there and signed that offer? A. No, sir, I didn't. I didn't understand much about it. But I had talked to Clyde Murray on it, and he told me that before, they had some papers. And then I filled one out. And then he said, "No," he said, "my understanding is that you have to advertise first." So we tore that up. And I filled this paper out to advertise.

Q. Now, the next document in your file, Mrs. Wopsock, is a document entitled, "Notification," and it's dated November 4, 1963, and it's addressed to you at Whiterocks. Do you remember receiving that? A. Yes, sir, I do.

Q. And it has the letterhead of the United States Department of Interior, Bureau of Indian Affairs, Uintah and Ouray Agency. A. I remember.

Q. And it was the original copy of that that you received signed by Superintendent Zollar?

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A. Yes, sir.

Q. And the notification advises you that you may sell 5 shares for the sum of \$2,500 no later than May 4, 1964. Is that right? A. Yes, sir.

Q. Now, the next document, Mrs. Wopsock, is an affidavit. It's a rather poor copy, but it's dated November 5 of 1963, and it purports to bear your signature. Is that your signature? A. Yes, sir.

Q. Do you remember signing that document? A. Yes, sir.

Q. All right. Will you tell me the circumstances under which you signed that document? A. Which one is this?

Q. This is the affidavit that says that you got \$2,500 paid by Clyde R. Murray, and it purports to be notarized by Mr. John B. Gale. A. Well, on this I was--I didn't receive any

cash. But we wanted a car, so we traded our other car in on this one, this newer one I was getting. And--

Q. All right. Now, let me interrupt you there, Mrs. Wopsock. What kind of a car did you have? A. My GMC pickup.

Q. A GMC pickup truck?

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A. Yes, sir.

Q. And what year was it? A. It was '60.

Q. A 1960? A. Yes, sir.

Q. And you went to see Mr. Murray about getting a new truck? A. Yes, sir. A '62.

Q. A '62? A. Uh huh.

Q. And what was your reason for going to see Mr. Murray? A. Well, we just wanted a new car, and that was the only way we had of getting it. And I always dealt with him on GMC truck, and we wanted to get another GMC pickup.

Q. Do you remember what date that was, Mrs. Wopsock? A. It was around about the first of August.

Q. In 1963? A. Yes, sir.

Q. And did you sign some papers? A. I signed some papers.

Q. And where were you when you signed the papers? A. At the First Security Bank.

Q. And is that the First Security Bank in Roosevelt? A. Yes, sir.

Q. Who did you see at the First Security Bank in

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Roosevelt? A. Mr. John B. Gale.

Q. Is this affidavit that I've directed your attention to, one of the papers that you signed at that time? A. Yes, sir.

Q. Now, I noted, Mrs. Wopsock, that the affidavit is dated November 5, 1963. Now, are you sure of the date when you signed that? A. Yes, sir. That date isn't right there, because I signed around, it was about the first of August when we got the truck, and that's when we made the deal.

Q. All right. Now, is there any particular reason why you can remember that it was the first of August? A. Well, everyone was--the Indians, we all like to go to Sun Dance. So they was Sun Dance on then. And we wanted to have a new car and a camper to take our family to Sun Dance.

Q. Is the Sun Dance always held in August? A. Well, we have two Sun Dances, one in July and one in August.

Q. All right. When you went down to Mr. Gale and signed this paper that I'm directing your attention, the affidavit, were all of the blanks filled in at that time? A. They couldn't have been, because this is the wrong date.

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Q. All right. Now, I'll turn to the next document in the file, Mrs. Wopsock.

* * *

Q. (By Mr. Nielson) While Mr. Bertoch is looking at the affidavit, Mrs. Wopsock, I'll ask you to relate for me any conversation which you had with Mr. Murray when you went to talk with him about getting the new pickup truck.

* * *

Q. (By Mr. Nielson) All right, Mrs. Wopsock, do you remember my question? A. Well, I offered that stock to Mr. Murray. I told him I had advertised for \$500 for one stock. But he told me that was too much. He said, "I can't get more than \$300." So I said, "Well, if that's all I can get, that's what I'll take." That's what I got, \$300.

Q. All right. Did you get \$300 cash? A. No, sir.

Q. Tell me what you did get. A. Just got our truck, a pickup truck and a camper. I didn't receive no cash.

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Q. And what did you give for this pickup truck and the camper? A. Do you mean the stock?

Q. Well, did you-- A. The value?

Q. Did you give Mr. Murray anything besides the stock? A. No, I give him the stock, and then we had a balance that--the camper was paid off, but we had a balance to pay on the truck.

Q. You had a balance to pay on the truck? A. Yes, sir.

Q. Of how much? A. It was \$54 for, I believe it was three years.

Q. I see. And how about your old truck? Did you keep the old truck? A. No. We turned it in, too.

Q. So then you gave Mr. Murray 5 shares of stock and your old truck, and you got a new truck and the camper and owed Mr. Murray \$54 a month for three years; is that right? A. Yes, sir. We had--we paid Yellow Manufacturing Company in Denver. That's where we sent our monthly payments.

Q. All right. Turning back to this affidavit again, Mrs. Wopsock, when you went down to see Mr. Gale, was anyone else with you? A. Just my husband and I and Mr. Murray.

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Q. All right. When you get down to Mr. Gale's office, was that in the bank? A. Yes, sir.

Q. Did you have any conversation with Mr. Gale about this transaction? A. No, sir.

Q. Did Mr. Murray have any conversation with him while you were present? A. No, sir.

Q. Was anything said at all by anyone? A. No. Just making the deal for this--these stocks.

Q. Well, was anything said about making the deal? A. We just told him that we was letting him have it, but I don't believe he mentioned the price that he was offering us--I mean, that he was telling us he could give us.

Q. Was anything said about the truck? A. He asked us if we was getting a new truck, and we told him yes.

Q. Anything else about the truck or the deal or anything at all? A. No, sir.

Q. All right. Now, I'm going to turn to the next document, and that's a document which purports to be a stock power, and it purports to bear your signature. Is that your signature?

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A. Yes, sir.

Q. And it bears Mr. Gale's signature in the lower left-hand corner. It says, "Signed, sealed, and delivered in the presence of John B. Gale, assistant manager." Do you remember signing that document? A. I guess I do.

Q. And where were you when you signed that document? A. The First Security Bank.

Q. And was Mr. Gale there? A. Yes, sir.

Q. Was the document complete when you signed it? A. I don't remember.

Q. Now, what about the date on it? It says, "November 5, 1963." Is that the day when you signed it? A. Is this to Mr. Gale?

Q. No. This is to Mr. Murray. A. No. I signed in August.

Q. I see. At the time you were down there before Mr. Gale, did Mr. Gale have you raise your hand and take an oath? A. No, sir.

Q. What did he say to you when you signed the paper? A. We just signed it. Just told me that "Here is where you sign."

Q. Did he ask you to sign it?

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A. Just laid the paper there. It was a little white paper.

Q. Now, the next document in the file, Mrs. Wopsock, is entitled "Certificate," and it purports to be signed by Superintendent Zollar, and it says--I'll read it--it says: "I hereby certify that on October 3, 1963, 5 shares of stock in the Ute Distribution Corporation owned by Letha Harris Wopsock, MB 467, were offered for sale to members of the Ute Indian Tribe for an amount of \$2,500, in accordance with law and regulations of the Secretary, as contained in the act of August 27, 1954, (68 Stat. 868) and 25 CFR, Part 243, and as further set forth in the Articles of Incorporation and on stock certificate No. 467; further, that there were no acceptances of said offer. Dated November 8, 1963." And signed by Superintendent Zollar. Have you ever seen that document before? A. Yes, sir.

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Q. You have seen that? A. Not that one. I've seen one like it.

Q. You haven't seen that particular one, though? A. No, sir.

Q. And the next document in the file purports to be a letter from Superintendent Zollar transmitting your stock certificate and others to First Security Bank. Have you ever seen that letter? A. No, sir.

Q. All right. I'm going to turn now to the next document in your file, which is another stock certificate for 5 shares. It bears No. 509, and it's made out to Letha Harris Wopsock. It looks just like the other stock certificate, doesn't it, except that it was for 5 shares? A. Uh huh.

Q. And it was 5 shares that you had left now after you had made this sale to Mr. Murray, wasn't it? A. Yes, sir.

Q. The next document in your file is an offer to sell, and it looks pretty much like the other one that we referred to. It says for 5 shares, \$3,500, dated December 16, 1963. Is that your signature? A. Yes, sir.

Q. And the next document is an original notification from Superintendent Zollar. Did you receive that in the mail?

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A. Yes, sir.

Q. It tells you that you can sell five shares for \$3,500 before August 6 of 1964; is that correct? A. Uh huh.

Q. All right. Now, after you received that notice from Superintendent Zeller, did you undertake to talk to anyone about the sale of your stock? A. The only one I talked to was a Mr. Hoops on that.

Q. You talked to Mr. Hoops? A. Yes.

Q. Will you tell me the circumstances under which you talked to Mr. Hoops? A. Well, I asked him if he wanted to buy, and he said, "Well, I don't have too much money to buy." He said, "What do you want for it?" And I told him what I had advertised for. And at that time I owed him a bill for groceries and some clothing I had gotten for my children, because my husband and I--

Q. Let me interrupt you there. What business is Mr. Hoops in? A. He owns Whiterocks Trading Post there at White-rocks.

Q. You owed him some money for groceries and clothing? A. Yes, sir.

Q. Would you go on with your conversation? A. And I told him if he bought it, I could clear my bill

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that way. So he agreed to give me the \$3,500.

Q. How many shares did you sell him? A. Five.

Q. Was it five shares? A. Yes, sir.

Q. I'm going to show you in your file, Mrs. Wopsock, an affidavit dated the 18th of February 1964, Letha Harris Wopsock. It's an affidavit reciting you received \$1,400 from James W. Hoops for 2 shares. A. This--five of them that it is referring to is just that one sale. And this was another sale.

Q. This was another sale? A. Yes, sir.

Q. Do you remember signing that affidavit? A. Yes, sir.

Q. It says that it was signed before Joseph A. Workman, a notary public? A. Yes, sir.

Q. Was that document complete when you signed it? A. Yes, sir.

Q. Did you receive \$1,400? A. Well, I did, in cash, but I didn't take it all out at once. I just left it with him and drew it out as I needed it.

Q. In other words, you got credit at the-- A. Store.

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Q. --trading post, didn't you? A. Yes, sir.

Q. Did you get any money at all? A. Yes, sir, I did.

Q. How much money did you get? A. Oh, I think I got half of that in cash.

Q. Half of \$1,400? A. And the other half I drew out in the store.

Q. I see. Now, I'll shew you the next document in your file, which is a stock power reciting that you sell 2 shares to James W. Hoops and Verna Hoops. Is that your signature? A. Yes, sir.

Q. And it says, "Signature guaranteed by John B. Gale." Did you go before Mr. John B. Gale when you signed that? A. Yes, sir.

Q. Now, this is the sale to Mr. Hoops. Did you go down to see Mr. Gale at that time? A. No. I signed this, but I never was in the bank with Mr. Hoops and--

Q. Whether you were in the bank with Mr. Hoops, did you go down and see Mr. Gale-- A. Uh huh.

Q. --at that time? And then the next document is a certificate just like the other one, from Superintendent Zollar, saying that you had advertised the stock. Have you

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ever seen that before? A. Yes, sir.

Q. You've seen this particular one? A. Not that one, but one like it.

Q. Then the next document in the file is a transmittal letter. Have you ever seen that? A. Yes, sir.

Q. That's from Mr. Zollar to First Security Bank. Have you ever seen that letter? A. No, I didn't.

Q. Now, let's turn to the next stock transaction. The document in your file is a stock certificate No. 628 for 3 shares. Now, that's the number of shares you had left over after you sold 2 to Mr. Hoops, wasn't it? A. Yes, sir.

Q. Did you ever see that stock certificate? A. No, I didn't.

Q. The next document in the file is a stock power dated August 28, 1964, to James W. Hoops and Verna Hoops, signed, it says here in the lower left-hand corner, "Signature guaranteed, First Security Bank of Utah, Roosevelt Office, John B. Gale." Is that your signature? A. Yes, sir.

Q. Did you sell 3 shares to James W. Hoops and Verna Hoops?

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MR. BERTOCH: Now, just a minute. May I ask a couple of questions on voir dire that might clear up some confusion? These last 5 shares we're talking about, Mrs. Wopsock, were they stock of your own, or were they stock of your father's of which you were guardian or the administrator or something? Do you recall?

THE WITNESS: No, sir. I only sold one stock that was my father's. He sold his other share.

MR. BERTOCH: So these shares of stock which you're talking about now sold on August 28 were your own shares of stock, is that correct?

THE WITNESS: Yes, sir.

MR. BERTOCH: Your Honor, I'm going to object at this time to any evidence with respect to any sales made after August 27, 1964. This is a serious problem in the lawsuit of serious concern to everyone, and I think we might as well try to dispose of the problem at this time. As I understand it, clearly from the complaint, professions of the complaint and the indications in the pretrial order, this is a lawsuit asking for damages in connection with the sale of stock prior to August 27, 1964. I call the Court's attention to the complaint, which is, of course, urged in the pretrial order. Merging doesn't do away with the obvious professions of the complaint. I call the Court's attention first to the prayer of the complaint, your Honor.

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MR. KLEMM: Would this be the third amended complaint?

MR. BERTOCH: The third amended complaint. I'll wait until you find it, Mr. Nielson.

(Argument by counsel. Discussion.)

THE COURT: The fair intentment of the complaint really does seem to be to limit the claim to stock sold before the 27th, and the pretrial order isn't so limited. I don't think the problem was discussed at the time of the pretrial order, as far as the Court was concerned--

MR. NIELSON: Your Honor, if I may address myself to that particular point--

THE COURT: Just a minute, Mr. Nielson. Paragraph 11 of the pretrial order says that: "In the event of ambiguity in any of the provisions of this order, reference may be made to the record of this conference to the extent reported by stenographic notes, and to the pleadings." At this time the objection to the testimony will be overruled. Whether this transaction was after the date of--what is the--

MR. BERTOCH: August 27, 1964.

THE COURT: --August 27 should be deemed part of the proceeding or not, I think I'll reserve and receive the evidence for what light, if any, it may throw upon the state of mind of the plaintiff Wopsock, or in the state of

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any of the defendants. It may be relevant and material for that purpose. It does occur to me that unless the defendants can show some prejudice, it would be unfortunate, and the Court would be reluctant to limit this particular plaintiff's claim, for instance, where she's already here in Court and sold stock before and after, to an arbitrary date. If I have the power fairly to do it, I would certainly be inclined to try it. Now, how many more cases such as this? You say there are very few?

MR. NIELSON: Let me say this to clarify the situation, your Honor. Now, Mr. Bertoch's objection was raised at the point where we referred to the document dated August 28, 1964. Now, our evidence will show that in many cases, and in fact possibly even most cases, the actual transaction was not on the date that the documents bear, and I think your Honor has already seen that with respect to this witness's testimony thus far. And so we would take the position that many of these transactions which on the face of them appear to be after the termination date were in fact before that date. And beyond that, it's hard for me--we have ninety plaintiffs in this case, your Honor, and I can't just recall how many there are that were after the termination date; but it is a

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substantial number of sales, of transactions. All of the ones in the Left Hand case, and that's fifteen plaintiffs.

THE COURT: Well, the Left Hand case, has that been a separate claim?

MR. NIELSON: It's been consolidated with this case for the purpose of taking trial and taking evidence, which is deemed to apply to the Lefthand case, as well as pursuant to the Court's direction. We don't have any of the Left Hand plaintiffs here to testify, but--

THE COURT: Well, let's study the pleadings. I don't see why that pleading was drawn so rigidly as tied to that date, if your claim was beyond that. There may be something else that we haven't--

MR. NIELSON: Well, it's because of the situation with the United States; your Honor that we have tied that date into the pleadings, because we made no claim against the United States after that date.

THE COURT: I appreciate that. But it's integrated with all of the allegations, and particularly those with regard to the bank, in which it first appears; and the enumeration of stock refers specifically to stock acquired before that date, rather clearly implying, if not alleging, that that was what the suit was about. Well, let's study the matter.

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(Further argument and discussion.)

MR. KLEMM: For the purposes of the record, I'd like to inform the Court that plaintiffs' counsel have agreed that they would seek no damages for any sales made after August 27, 1964, as against the Government; and I think Mr. Nielson has stated that twice in his argument.

THE COURT: Yes.

MR. KLEMM: And we would just want the Court to have that in mind.

THE COURT: When was that understanding reached?

MR. NIELSON: Well--

THE COURT: I'm addressing counsel.

MR. KLEMM: This understanding was reached I think basically within the last two weeks. We had discussed this throughout the case. However, we had never--

THE COURT: What do you mean, discussed it throughout the case?

MR. KLEMM: We discussed the fact that there are two possible termination dates in which the responsibility of the Government would end: August 27, 1966, and August 27, 1964; but basically, in no way could the Government be responsible for any sales after the second date.

THE COURT: By reason of the restoration or--

MR. KLEMM: By reason of the terms of the statute.

THE COURT: I see.

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MR. KLEMM: Public Law 671. And we had never come to any formal agreement. However, within the last two weeks we discussed the matter fully and agreed that this would be the case. Isn't that correct?

MR. DUNCAN: We only add one proviso to that. Mr. Nielson suggested this.. There were a number of sales that were in fact on the records that will be introduced dated after August 27, in which the consideration and the instruments and so on were finalized before that date. So we don't mean the stipulation to bind us to the transfer date, necessarily, but the date the transactions of which we complain in fact were placed. There were several purchases made before when money was paid down to certain of the plaintiffs and the stock was actually transferred after August 27; and we say the Government was liable for those.

MR. KLEMM: I think we can argue that particular point at a later time, because we argue that we would not be responsible for any sales where no offer of sale was made to the tribe, because we would have no notice of such sales. But I think that we could argue at a later time.

MR. NIELSON: Mr. Klemm has brought up the other qualification I wanted to make. We claim where an offer to sell was in fact made before termination date, there is a stipulated period. What was it? Sixty days? In which the

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sale can be made after an offer--

MR. KLEMM: Six months.

MR. NIELSON: Six months. So if the offer was in fact made to the superintendent before the termination date, we would take the position that there would be a residual duty which would carry on for a short period of time after actual termination as to that sale only, because of the offer having been made prior to August 27, 1964.

MR. KLEMM: I might state for the record this is the first time since I've been in this case that Mr. Nielson has ever raised that issue. I don't believe that's part of the pleadings.

MR. NIELSON: I'm not sure we have any such case. I just make that remark. Where the Government takes some action prior to August 27, we take the position that they might also incur some liability; but we'll have to wait and see where the evidence takes us on that.

THE COURT: From what I understand, your stipulation or agreement is that any sale effected after August 27, 1964, would not involve liability on the part of the Government, leaving for determination the question of what should be regarded as the operative facts concerning the sale.

MR. NIELSON: Yes.

THE COURT: And your stipulation doesn't go to

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that. And the Court would have to make that determination in view of the law. And this other matter that you last mentioned, I assume you've had no specific understanding on that.

MR. NIELSON: No.

THE COURT: And we would just have to meet that when we come to it. Now, with regard to this other matter, I'm going to study the record and the pleadings a little further. I'm inclined to think that if there is any limitation in the pretrial order with regard to the issues as between the other defendants and the plaintiff, I should give serious consideration to permitting an amendment. It doesn't look to me like an amendment is necessary to the pretrial order. And if some formal amendment to the pleadings is necessary in the interest of justice, I won't rule that out, although pleadings are merged in the pretrial order. I don't think we should fragment these matters, particularly since the reserved issues between other plaintiffs and the defendants, including, I suppose, this last filed case where admittedly the transactions, I understand, arose after that date, will still be before me for consideration, and considering the fact that the intent of all counsel, as I understand it, would be to get

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representative cases covering all spectrums of the case, I should fragment particularly this claim of the plaintiff, this particular plaintiff. I don't intend to proceed on that assumption. I give notice now that if amendments are necessary to carry out the Court's idea just now expressed in the interest

of justice, and they can be made and proceedings conducted without prejudice to any party, I certainly am not going to apply an overly restrictive view of the proceedings, which I think would defeat the common standings with regard to the bellweather claims, according to my notion, anyway, and not be in the interest of justice. Proceed.

Q. (By Mr. Nielson) Now, Mrs. Wopseck, I was just directing your attention to the stock power dated August 28, 1964, and which recites that you were selling the stock to James W. Hoops and Verna Hoops. Do you recall that transaction?
A. Yes, sir.

Q. All right. Would you tell me when it occurred? A. Somewhere around the 14th of July.

Q. 14th of July? A. Yes, sir.

Q. Of what year? A. '64.

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Q. Could you tell me how you came to see Mr. Hoops about that particular stock? A. Well, they was having a, going back to the Sun Dance again, and I was asked by a Sun Dance chief if I would have the Sun Dance stand, the concession. And I had to have money to pay the Sun Dance chief for that. So I talked to Mr. Hoops on it, if he would pay that one. And he said yes, he would.

Q. Do you recall signing that document (showing)? A. Yes.

Q. At the time you signed that document, was it complete? Was all the writing in the blanks? A. The day is wrong, because it was in July 14.

Q. I see. Did you go to see Mr. Gale when you signed that? A. It was in the bank when I signed that.

Q. I see. Did you see Mr. Gale? A. Yes, sir.

Q. Did he have you raise your hand and swear? A. No, sir.

Q. All right. Now, that takes care of 10 shares, if I recall, Mrs. Wopseck. I'll turn to the next document in your file, which is a Certificate No. 556 for 5 shares made out to Letha Harris Wopseck. Have you ever seen that certificate before?

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A. No, sir.

Q. Could you tell me how you came to obtain another 5 shares of stock in this corporation? A. I inherited from my mother, Annie Pike Harris.

Q. When did Annie Pike Harris die? A. I don't remem-

ber.

Q: Do you remember approximately? A. No, sir, I don't.

Q. Well, let's turn to the next document, which is a document entitled, "Assignment," dated--well, it's undated. Let me ask you this. Mrs. Wopsock, did your mother die before or after August 27, 1964, do you recall? A. Before.

Q. It was before? A. Yes, sir.

Q. Did you sell any of those shares of stock before August 27, 1964, the ones you inherited? A. Yes, sir.

Q. When did you sell them? A. That was in July.

Q. July-- A. I sold one in November.

Q. One in November. So that would have been August 27? A. After.

Q. Yes. And who did you sell those to?

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MR. BERTOCH: Your Honor, may I have continuing objections to any evidence with respect to transfers after August 27, 1964?

THE COURT: You may. The objection is overruled.

MR. PAULSON: For the record, your Honor, we join in that objection.

THE COURT: Objection overruled.

Q. (By Mr. Nielson) I just asked you, Mrs. Wopsock, who you sold the shares to in November of 1964. A. Mr. Gale.

Q. Mr. John B. Gale? A. Yes, sir.

Q. The defendant? A. Yes, sir.

Q. Is he in the room here today? A. Yes, sir.

Q. Would you point him out for me? A. He is sitting right back there.

Q. Is that the man with the glasses and has a piece of paper in his hand? A. Yes, sir.

THE COURT: I assume there is no question about identification.

Q. (By Mr. Nielson) Will you describe for me the circumstances under which you went to see Mr. Gale about

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your stock? A. Well, at that time there wasn't hardly anyone buying, and I was told the rumor that he was buying. So I went and talked to him and--

Q. Now, where did you talk to him? A. In the bank.

Q. That's the First Security Bank in Roosevelt? A.

Yes, sir.

Q. All right. Was anyone else present when you talked to him? A. No, sir.

Q. All right. Will you tell me what your conversation with him about stock was? A. Well, I asked him if he was buying stock, and he told me that he was buying for someone, but he didn't say who.

Q. All right. A. And all they were offering was \$400 a stock. And I told him, well, if that's all I could get for my stock, well, that's what I'd take, because it was getting close to Christmas, and I needed some Christmas money for my children. Besides, I needed to buy some coal and some food for my children at that time. So I told him I'd be back in. So next time I went back in--

Q. How long after this was it you went back? A. About two or three days afterwards.

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Q. Did you have another conversation with him then?

A. Yes, sir.

Q. Tell me about that. A. He told me that the man that he had been buying for wasn't buying any more, he was buying for himself. And he said that all he could give me was \$300. And I told him, "Well, you promised me \$400." He said, "Well," he said, "I told you the man I was buying for isn't buying any more, and I'm buying for myself." So I sat there a little while and said, "Can't you give me \$50 more?" And he sit there awhile, and he said, "Yes, I'll give you that much more." So he gave me \$350.

Q. Did you complete that transaction there in the bank?

A. He said: "I don't have any money here. We'll have to go up to my house and get the money." So we went up there with him, my husband and I. And he got his money, but we went back down to the bank, and when we got back down to the bank I asked him if he could just give me a little at a time, because if I took it all, I knew that I wouldn't save enough to buy my kids' Christmas. So he said that would be all right with him, that I could come in and get it when I wanted. And I think I went in and got it three different times.

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Q. I see. Did Mr. Gale have you sign a paper that day?

A. Yes, sir.

Q. Did he have you raise your hand and swear to it? A. No, sir.

Q. I'll show you a document in your file entitled, "Assignment." That's one we just referred to, and it doesn't have a date on it. Is that the document you signed that day?
A. This is my signature.

Q. When you signed that document, were the blanks filled in? A. No, I don't know. This Johnson, there was nothing up there.

Q. You're referring to where it says you "hereby assign and transfer to Nerval R. Johnson and Fern Johnson, JTWSR, 3 shares." Is that what you're referring to? A. Yes, sir.

Q. Do you know anyone by the name of Nerval Johnson or Fern Johnson? A. I do not.

Q. Have you ever sold any stock to anyone by that name? A. No, sir.

Q. All right. So going back to my original question, was that form filled out when you signed it? A. No, sir.

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Q. All right. Now, that's for 3 shares. So that should leave you with 2 shares. Is that right? A. Yes, sir.

Q. I'll turn to the next document in the file, which is a stock certificate, No. 922, bearing your name for 2 shares, and on the back of the stock certificate, which is the second page here on the duplicate, there is a form that appears to bear your signature. Is that your signature? A. Yes, sir.

Q. And it has the date October 10, 19--it looks like 1961, but I assume that it would be 1964. Is that right? A. Yes, sir.

Q. Did you sign that document? A. Yes, sir.

Q. All right. Will you tell me the circumstances under which you signed that one? It recites that you're selling one share to John B. Gale and Ruby E. Gale. Will you tell me-- A. I don't remember, only that I needed money. I don't really remember.

Q. Is that the right date on that particular document? A. It must be, yes.

Q. Do you remember it? A. Yes, sir, I do.

Q. And then the last document in your file is a stock

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certificate for one share in your name. It's No. 958, and on the back of the stock certificate, again, it's endorsed November 3, 1964, Letha Harris Wopsock, John B. Gale, one share. Is that your signature? A. Yes, sir.

Q. Do you remember signing that? A. Yes, sir.

Q. Will you give me the circumstances surrounding that

sale? A. Just like the rest of the sales. I had to have money, and my husband wasn't working at that time, and we have a family of about 12, and I needed the money. So I went to him.

Q. How much money did you get for that one share? A. I got about four for that one.

Q. \$400? A. Yes, sir. I don't remember.

Q. Did you get that in cash? A. Yes, sir.

Q. The preceding one for one share, do you remember what you got for that one? A. I got \$350 for that one.

Q. \$350? A. Uh huh.

Q. Was that in cash?

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A. Yes, sir.

Q. There is also in this file, Mrs. Wopsock, a document that purports to be a power of attorney--excuse me, it's a stock power--in which you purport to sell, it says: "Letha Harris Wopsock for Clarence D. Harris, Sr. 3 shares to Edgar G. Calder and Irma H. Calder." I believe you referred a little while ago to a transaction involving your father's shares. Is that the one you had in mind? A. Mr. Calder, he just sold one.

Q. He just sold one? A. And--

Q. Excuse me. You're correct. It does say one. And that's the one you had reference to? A. No. He done that himself, but I was with him and signed that, because he had a car--

Q. I see. A. --that he wanted fixed, and he didn't receive any cash. He just had the car fixed and turned one stock. And this is the stock. But the one that I sold was Verl, Verl Haslem--I was with Verl Haslem at that time, and he was doing business for Bill Hoops. And my father sold that one to Bill Hoops.

Q. I see. Did you sign the papers for him at that time? A. I signed the papers to Verl Haslem in the bank.

Q. Did you have a power of attorney for your father at

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that time? A. Yes, sir.

Q. What did your father get for that one share of stock? A. He got \$500.

Q. \$500? A. Yes, sir.

Q. Was that in cash? A. Yes, sir.

Q. Mrs. Wopsock, before you received your Ute Distribution stock, or before you were notified that you had some Ute Distribution stock, had you ever owned a stock certificate

before? A. No, sir.

Q. Did you know what a stock certificate was? A. No, I didn't.

Q. Do you know what "dividends" are? A. No, sir.

Q. Do you know what "unliquidated and unadjudicated claims against the United States" are? A. No, I didn't.

Q. Do you know what "assets not susceptible to practical or equitable distribution" are? A. I'm sorry, I don't.

Q. Do you know what "oil shale" is? A. I don't know what it is, but I've heard of it.

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Q. I see. A. I've heard of it, but I don't know what it is.

Q. Has anyone ever told you that your Ute Distribution stock represented your share in all of the minerals in the Ute Indian Reservation? A. No, sir.

Q. Had anyone ever--I'll read a statement to you, Mrs. Wopsock. "Transfer of this certificate at any time prior to August 27, 1964, to a person not a member of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, as defined in Public Law 671--83rd Congress, approved August 27, 1954, 68 Stat. 868, shall be invalid unless the certificate of the Superintendent of the Uintah and Ouray Reservation is endorsed thereon showing that a prior and proper offer has been made to members of said tribe in accordance with law and the regulations of the Security of the Interior." Had anyone ever told you that before? A. No, sir.

Q. I'll read you another statement. "This certificate does not represent stock in an ordinary business corporation. This corporation is organized for the purpose of distributing to the stockholders in the future their respective shares in the proceeds or income from all claims and assets in which the mixed-blood members of the Utah

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Indian Tribe of the Uintah and Ouray Reservation, Utah have or will have an interest under the provisions of Public Law 671-83rd Congress, approved August 27, 1954, 68 Stat. 868, as amended. The future value of, or return on, this stock cannot be determined. This stock certificate should neither be sold nor encumbered by the owner thereof, but should be retained and preserved for the benefit of the stockholder and the stockholder's family." At the time you entered into these transactions relative to your stock, had anyone ever read that statement to you? A. No, sir.

Q. Did you know that? A. No, I didn't.

* * *

CROSS-EXAMINATION BY MR. KLEMM

Q. Mrs. Wopsock, how many years of schooling have you had? A. To the tenth grade.

Q. During that ten years I assume that you learned to read, didn't you? A. Yes, I did.

Q. And you can read now, can't you? A. I can read, but some of it I don't understand.

Q. You're at least able to read the documents that were shown to you today, aren't you? A. I'd be able to read them, but I've never been shown these certificates or anything. I've never seen them.

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Q. But you would be able to read them if you took the time to do so? A. I'd be able to read them if I was shown them.

Q. Now, let's talk about your stock for a minute, Mrs. Wopsock. How many shares did you sell in all? A. Fifteen.

Q. And they were ten that you received? A. Yes, sir.

Q. And also five that you received as the heir to your mother, is that correct? A. Yes, sir.

Q. I think you said that you sold five shares to Mr. Murray, is that correct? A. Yes, sir.

Q. That would be Clyde Murray, wouldn't it? A. Yes, sir.

Q. And I think you said that you sold those on August 1 of 1963, is that correct? A. Yes, sir.

Q. You remember that date specifically, don't you? A. It was around August 1.

Q. Now, you also sold some shares to Mr. Hoops, didn't you? A. Yes, sir.

Q. How many did you sell to Mr. Hoops?

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A. About 7.

Q. Now, that wasn't all at one time, was it? A. No, sir.

Q. You sold 5 to Mr. Hoops the first time, didn't you? A. Yes, sir.

Q. And you went to the Bureau of Indian Affairs and offered those for sale to the Tribe, didn't you? A. No, sir.

Q. Didn't you fill out some papers to be advertised, I think you said? A. I filled out papers to be advertised, but I didn't understand that that was being offered to the Ute Tribe, because I was told that the Ute Tribe wasn't interested in buying them.

Q. All right. You have been told that the Ute Tribe didn't want stock? A. Yes, sir.

Q. Isn't that correct? That you went to the Bureau of Indian Affairs, and you filled out the papers, didn't you? A. I went to Mrs. Logan, and I filled out the paper.

Q. All right. By the way, how much did you put in for those five shares of stock as posted price? A. The first five I sold to Mr. Murray, why, I advertised for \$500.

Q. How about the second five?

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A. Well, I talked to Mrs. Logan, and she told me that they should be worth more than that. And I told her, "Well," I said, "I'm going to advertise for \$700." And she said, "Well, I think they're worth more than that, too."

Q. Well, did you advertise for \$700? A. Yes, sir.

Q. And when you sold them to Mr. Hoops, you got \$700, didn't you? A. I got \$700 in credit--with some cash and some credit.

Q. Well, you're satisfied with that sale, aren't you? A. Yes, sir.

Q. You're not objecting to that sale here, are you?

A. No, sir, not with Mr. Hoops.

Q. You think you got a square deal on that sale, don't you? A. Well, I got what I asked for, but I've been told--

Q. Well, you did get what you asked for, Mrs. Wopsock? A. Yes. I didn't really understand what it was. So that's what I asked for.

Q. Then you sold some shares to Mr. Clyde Murray. How much did you get for those shares? A. \$300.

Q. How much did you post those for? A. \$500.

Q. Now, Mrs. Wopsock, between the time that you posted

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those shares and the time that you sold those shares, you received a notification from the Bureau of Indian Affairs, didn't you? A. What kind of notification?

Q. Didn't you receive a letter from Mr. Zoller about that? A. I may have.

Q. I'll show you a document entitled, "Notification," that has previously been identified as part of Plaintiffs' Exhibit 3-A and ask you if you received the original copy of.

that letter from the Bureau of Indian Affairs. A. I may have.

Q. Well, did you receive this original copy of the letter from the Bureau of Indian Affairs in regards to the sale of your stock to Mr. Hoops? A. I don't remember.

Q. You said I think on your direct examination that you had received that letter. Didn't that come from your own files? A. It must have.

Q. Did you furnish this to your attorney? A. I gave that to him.

Q. So can we assume that you must have received it? A. Yes, sir.

Q. You received it through the mail, didn't you? A. Yes, sir.

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Q. Did you also receive another copy of that letter in connection with your sale of your shares to Mr. Hoops? A. Yes, sir.

Q. Excuse me. In regard to your shares sold to Mr. Clyde Murray? A. I don't remember that one.

Q. Well, did you read the letter that you received that you furnished to your attorney? A. Yes, sir.

Q. Now, were you aware at the time you sold your shares to Mr. Murray that you were supposed to receive the same amount as what you posted them for? A. No. I wasn't.

Q. You didn't know that? A. Because a lot of them was just getting what they could get out of it.

Q. That was your case, then, wasn't it? A. Yes, sir.

Q. You just got what they would give you, is that correct? A. They told me that's all it was worth and that's all they could get for it.

Q. Did you try to sell your stock to anyone else? A. At that time I was just interested in buying a car, and he said that he would deal with me. So-

Q. Now, on each instance that you sold your stock, Mrs.

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Wopsock, you sold your stock on your own volition, didn't you? You went to the people to sell your stock, didn't you? A. Yes, sir.

Q. Nobody came to you, did they? A. No, sir.

Q. You went to them? Isn't that correct? A. Yes, sir.

Q. And you were willing to sell your stock, weren't you? A. Yes, sir.

Q. And that was your intention in going to these people, wasn't it? A. Yes, because I had to have the money.

I couldn't get no help any place else.

Q. Now, you testified about some other sales that you made. I think you said you sold some to Mr. Gale and some other shares to Mr. Hoops, and then there were some shares to a Johnson; is that correct? A. I never did sell any to Johnson.

Q. How many did you sell to Mr. Gale? A. I sold three the first time and then two another time.

Q. So you sold 5 shares to Mr. Gale? Is that correct? A. That's what it has there.

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Q. But in connection with those sales you didn't go to the Bureau of Indian Affairs, did you? A. No, sir.

Q. Why not? A. Well, I don't know. I never did get any help from them. So I didn't think--

Q. You didn't go down there and tell them that you were going to sell the stock, did you? A. No, sir.

Q. In the cases of those shares, you went to the bank, didn't you? A. I went to Mr. Gale.

Q. And you actually signed the stock certificate, didn't you? A. Yes, sir.

Q. Mrs. Wopsock, do you remember when on a previous occasion you testified in connection with this case? A. Yes, sir.

Q. Do you remember when you came to an office on State Street on June 24 of 1966? A. Yes, sir.

Q. And you testified when your deposition was taken? A. Yes, sir.

Q. I'm going to read you some testimony that was taken at that time. Then when I get through I'm going to ask

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you if that was your testimony on the taking of that deposition. I'm referring to page 10 of the Wopsock deposition, and I'm beginning on line 7. This is my question to Mrs. Wopsock: "Question: Well, did anybody ever write you a letter--write a letter to you and tell you this? "Answer: I think I got one from the Superintendent once telling me that we--that what we advertised for, we were supposed to receive that amount, what we advertised for." Now, was that your testimony on that day? A. Yes, sir.

* * * *

CROSS-EXAMINATION BY MR. BERTOCH

Q. Mrs. Wopsock, the shares that you sold to Mr. Gale, you sold just before Christmas, I think you said, of 1964; is

that right? A. November.

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Q. In November of 1964? A. Yes, sir.

Q. So was it your understanding at that time, since it was after August 27, you didn't have to advertise them with the Tribe; is that correct? A. Yes, sir.

Q. It was your understanding that they could be sold by you at any price you wanted to sell them for? That's true, isn't it? A. Yes, sir.

Q. Now, at the time you made the sales to Mr. Gale, at that time were you satisfied with the sales? A. Well, I wasn't satisfied, but that's all I could get. So I--I really needed it, and I accepted it.

Q. Now, when this lawsuit started, when you talked to your attorneys, were you aware that you were bringing a lawsuit against John Gale? A. Well, I really signed against Clyde Murray and Dick Bastian, but I had dealings with Mr. Gale, so--

Q. But you really signed initially against Dick Bastian and Clyde Murray, and you didn't know--you didn't intend at that time to sue Mr. Gale, is that right? A. I didn't know I was coming in against him. But that was the dealing I've had with him, and I made my statement.

Q. But you did know you were suing Mr. Gale?

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A. No, I didn't understand the case.

Q. All right. You didn't understand you were suing Mr. Haslem, is that right? A. No, I didn't.

Q. And you didn't understand you were suing First Security Bank; is that right? A. Well, I was told that First Security Bank would be involved.

Q. You were told that, but initially you didn't ask to sue First Security Bank; is that right? A. I didn't understand it.

Q. All right. Do you think that Verl Haslem owes you any money, Mrs. Wopsock? A. Well, I couldn't say.

Q. You didn't sell any stock to him, did you? A. No, sir.

Q. Now, you saw the stock certificate at the time you sold your stock to Mr. Gale. That's correct, isn't it? A. Yes, sir.

Q. If you had wanted to read it at that time, you could have read the red print on the front of the stock certificate? Is that right? A. Well, I wasn't told to read it, or if I--I wasn't asked if I understood that certificate. All it was was to sign

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here.

Q. But you saw the certificate, is that right? A. I just seen the certificate, but I never read it, and no one ever explained it to me.

MR. BERTOCH: All right. That's all I have.

REDIRECT EXAMINATION BY MR. NIELSON

Q. Just a question or two. Mrs. Wopsock, when you went down to Mr. Gale's office to sign that certificate, how did the certificate get in Mr. Gale's hands, do you know? A. I do not know.

Q. Did you take it to him? A. No.

Q. Did he have it when you got there? A. He must have. I never did have it.

Q. Did he show you both sides of the certificate? A. No, sir.

Q. Which side did he show you? A. The front part where I signed.

Q. The part where you signed, is that what he showed you? A. Uh huh.

Q. Did he ask you to read the certificate? A. No, sir.

MR. NIELSON: That's all.

(Discussion. Whereupon a noon recess was taken from 12:07 p.m. to 2 p.m.)

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* * * *

JOHN B. GALE called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

THE CLERK: State your full name, please.

THE WITNESS: John B. Gale.

DIRECT EXAMINATION BY MR. DUNCAN

Q. You're one of the defendants in this action, Mr. Gale? A. Yes, sir.

Q. How old are you, sir? A. Forty-one.

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Q. Where do you live? A. Roosevelt, Utah.

Q. How long have you lived there? A. About 17 years.

Q. How long have you worked for First Security Bank?

A. Seven years. Going on seven.

Q. So you came to work for them in 1960? A. Yes, sir.

Q. What did you do in the Basin before that? I'm talking about the Uintah Basin. A. I worked for a newspaper office. Uintah Basin Standard.

Q. How long were you there? A. Ten years.

Q. Now, how long have you been a justice of the peace, Mr. Gale? A. Now that I--I don't recall exactly. Prior to going to the First Security Bank I was justice of the peace. So I've probably been there eight, ten years, or--

Q. So during this period of time you've lived in or near Roosevelt? A. Yes, in Roosevelt.

Q. And you during 1963 and 4 knew most of the mixed-bloods by sight, didn't you? A. Well, I didn't know whether they were mixed-bloods or whether they were a full-blood. I knew most of the people

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there.

Q. I'll ask you, sir, if this isn't your testimony in your deposition on 23 December '65 on page 8: "Question: How about the mixed-bloods? Do you know most of them? "Answer: I know a lot of them by sight. Most of them. I don't know them by name personally." And before that didn't you respond to this question: "Question: Would you say it would be a fair statement that you personally know most of the people in Roosevelt? "Answer: In Roosevelt proper, most of them." Is that what you testified to? A. Yes, sir.

Q. Do you wish to change it today? A. No. I know most of the people in Roosevelt.

Q. And you knew most of the mixed-bloods by sight in 1963 and 1964? A. Well, I wouldn't know that they were mixed-bloods or whether they were full-bloods, but I knew most of the people.

Q. Now, tell us how you worked your way up the ladder at the bank. What was your first job? A. When I was first employed, I was employed as what they call a utility man, learning the operation of the bank.

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Q. This was supervising the tellers, was it not? A. Not at this time. I started out by learning the--how the bank operated, the sorting of checks and the posting of checks and the operation of a window and the taking of financial state-

ments, taking of loan applications, and after I had been there some time, then, I was able to take loan applications and present them.

Q. As a matter of fact, you became assistant manager in 1961, did you not? A. This is very possible, yes.

Q. Did you or did you not, sir? Do you recall your testimony? A. I did.

Q. You did. Yes, sir. And in 1961 and '62, and '63 and '64, your particular duty was in charge of Time-Way loans? Is that correct? A. Yes.

Q. During that period of time you had authority to make a loan up to \$500 without anybody's approval? A. Yes.

Q. During that period of time you signed cashier's checks for the bank as assistant manager? A. Yes.

Q. And without any committee or other approval for these transactions?

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A. Yes.

Q. How long have you been a notary public? A. The date that I was a notary, I don't recall. It was sometime after going to the bank.

Q. Does 1960 sound about right you, sir? A. Well, now, it could have been. It was shortly after I had gone to the bank. In my work I--or, in the bank we needed another notary, and I was of age. So I became a notary.

Q. I refer you to page 9 of your deposition and I ask you this question: "Question: But you've been a notary since sometime in 1960, and you are now?" And your answer was yes. Is that your testimony? A. That would be my testimony.

Q. Now, at all times since then you've always been justice of the peace, and that's an elective office? A. Yes.

Q. During that time you had a number of mixed bloods come before you on criminal matters, didn't you? A. Yes.

Q. Some of them you sentenced to jail? A. Yes.

Q. In your capacity with First Security Bank as assistant manager, you also had access to all credit information,

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loan applications, financial statements of people that had loans or were applying for loans, did you not, sir? A. Yes, I did.

Q. Now, when did you first become aware of the Ute Distribution Corporation? A. The time I don't recall. Prior to it becoming the Ute Distribution Corporation, it was known as the Affiliated Ute Citizens. The specific time I'm not sure when this was. I don't recall.

Q. It was about the time of the first sale, was it not, sir? A. It could have been.

Q. And shortly after the first sale, a transfer sheet came through to the bank showing who had sold and who had bought stock in UDC? A. No, I don't believe so at this time.

Q. Is it a fair statement that you received copies of the bank's Salt Lake transfer sheets from time to time? A. Yes.

Q. So you knew who sold and who bought and the address of both from time to time? A. Yes.

Q. Now, can you tell us then, sir, when you first heard about the--and I think for the record we'll identify "UDC" as the Ute Distribution Corporation--when did you

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first hear of that corporation, as distinguished from the Affiliated Ute Citizens? A. I couldn't say the date right now when I first heard of it.

Q. Let's be very specific. When did you first start purchasing the stock for yourself or for somebody else? A. I think it was in August.

Q. August of what year? A. '64.

Q. August of '64 was the first? A. I'm not sure. Now, this I'm not positive on.

Q. Perhaps I can refresh your memory, sir. First of all, let me have you identify an affidavit that you filed in this case and ask you if this is your signature. That's a conformed copy. I'm afraid it isn't going to be--but do you remember signing that affidavit (showing)? The original is in the file. A. I don't--I may have signed this.

* * * *

Q. (By Mr. Duncan) Now, with that stipulation, Mr. Gale, I'm going to ask you if you prepared or are aware that this is a schedule of your purchases and sales that was attached to the affidavit you signed? A. Yes, I did.

Q. And you swore in here, did you not, sir, that on the 16th day of July, 1966: "To affiant's best information and belief, the information contained in the attached exhibit is accurate"? A. Yes.

Q. Is it? A. Yes. To my knowledge.

* * * *

in parenthesis, aren't there? A. There are two here, yes. That would be May.

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Q. You only made two purchases before the August 27, 1964, date? A. Personally, yes.

Q. I don't think--what do you mean by "personally"? A. That I purchased myself.

Q. So except for the limitation of those you purchased for somebody else, it's your testimony that this is all you purchased, listing fifteen different transactions? A. Yes, I believe that's correct.

Q. Sir? A. This is correct.

Q. That is your testimony? A. Yes.

Q. Now, there are a number of names here that you familiarized us with during your deposition. "Sold to Frost and Jasper, Gyllström, Woods, Phelps, Stevenson, Carpenter." Each one of those was an out-of-state purchaser for whom you were working; is that correct? A. Yes.

Q. Now, will you tell us how you first came into possession of moneys with which to purchase UDC stock?

MR. BERTOCH: Your Honor, I'm going to have to object to this now. I've let it go a long time. It really is all irrelevant. It has nothing to do as far as I can see yet with any one of these twelve plaintiffs.

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Now, if you deal with the purchases made from one of the twelve plaintiffs, then I would have no objection.

THE COURT: What relevancy and materiality do you claim?

MR. DUNCAN: The res gestae, the procedure this man followed over three years, how he acquired the money, how he dealt with the mixed-bloods and some of the plaintiffs he dealt with directly; all of them I think they guaranteed their signature.

THE COURT: Are there any of the plaintiffs besides Mrs. Wopsock?

MR. DUNCAN: Yes. Yes, there are a number of others. It's essential to show the scheme of the man, what he did before, and these twelve just fit into part of the plan.

MR. BERTOCH: I submit that only what is important is what he did with these particular plaintiffs.

THE COURT: As I recall the pretrial order, it limits our consideration to matters relevant to the twelve plaintiffs selected, but also any general matters that might be applicable to them, even though inapplicable to others. Under that assumption

tion I think the objection should be overruled.

Q. (By Mr. Duncan) One of the named plaintiffs is Glen Reed, and you purchased stock from him, 5 shares for \$350

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a share, and sold it to one E. Phelps; correct? A. Yes.

Q. And you sold it to E. Phelps for \$500? A. That's true.

Q. So you made a \$900 commission on Mr. Reed. Did you tell Mr. Reed you were buying it for E. Phelps? A. I don't recall having told him.

Q. You didn't tell him? A. No.

Q. And as a matter of fact, E. Phelps wasn't on any of the instruments when you notarized it?

MR. BERTOCH: I object. Irrelevant and immaterial. I don't see what difference it makes whether he told whom he was going to sell it to.

THE COURT: The objection is overruled.

MR. DUNCAN: May I have the question read back?

MR. BERTOCH: May I make a special objection to all the questions that have been asked with respect to this exhibit which has been put in evidence and the exhibit itself, as far as First Security Bank is concerned, on the grounds that it's irrelevant and immaterial.

THE COURT: The objection is overruled. Unless it's connected up, of course--the matter of materiality and relevancy may be presented at an appropriate time. On the rule of convenience, the Court doesn't believe the

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case should be fragmented, and objections on the ground of materiality and relevancy urged with legitimate effect when only a small part of the case is before the Court. There will come a time, of course, when it can be determined whether matters have been connected up or not; but any party has the right to make his or her case by pieces of evidence and can't have the entire composite all at one time. Under a theory and under the rule of convenience, the objection is overruled.

(Question read.)

A. This is correct.

Q. (By Mr. Duncan) In other words, the transfer documents, the name of the grantee or the assignee on Mr. Reed's or any of these others that you prepared, the name of the grantee was a blank at the time you guaranteed the signature? A. It may have been on some of them.

Q. Now, I showed you a few minutes ago, sir, for the convenience of yourself, Court, and counsel, Exhibits 1A through 12A and ask you if you could verify that the documents therein which purport to bear your signature as either guarantor or notary are in fact your signatures; have you been able to do that? A. I got through two. I haven't got through the rest.

* * * *

Q. (By Mr. Duncan) All right, sir. The two you checked are 12A and 11A, is that right? A. That's correct.

Q. Both of those that have the signatures in them are yours? A. Yes.

Q. Now, did you ever notarize an affidavit that had some incomplete statements, blanks, or figures not filled in? A. No.

Q. And that was never the case? A. Not without figures, no.

Q. And I take it that you always had the person whose signature you were notarizing appear before you? A. That's correct.

Q. Now, whenever the instruments that we're talking about here were notarized by you, there was a charge, wasn't there? A. For a notary fee.

Q. Yes. And that was fifty cents?

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A. That's correct.

Q. And that went to the bank? A. Yes.

Q. And it was done on the bank's premises? A. Most of the time.

Q. But the fee went to the bank? A. That's correct.

Q. Now, from time to time mixed-bloods would come into the bank, and you would talk to them about various business matters; isn't that correct? A. Well, this is very possible.

Q. Well, they came in often, and you saw them? They wanted loans, or they wanted various things, including guarantees and notary? A. This is correct.

Q. Now, during 1963 and 1964 were you acquainted with Richard Murray? A. Yes.

Q. You knew him as Nick? A. Yes.

Q. What business was he in? A. I believe at the time

he was in the service station business and had a used car lot in connection with it.

Q. Did you see him three or four times a week during '64? A. I could have.

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Q. Yes. He banked there, and his checking account was there? A. That's correct.

Q. And he bought some cashier's checks from time to time from you, from the bank? A. Very true.

Q. What business was Wally Davis in over in Vernal? A. He was in Davis Chevrolet.

Q. Who were the principals in Jet Chevrolet in Roosevelt? A. Dick Bastian and Earl Dillman.

Q. And you knew this in 1963 and 1964? A. Yes.

Q. What was L & L Motors? A. They're a car dealer.

Q. And they were in 1963 and 1964, and you knew it? A. Yes.

Q. Now, Mr. Gale, were you ever shown this document we've marked and had admitted as Exhibit 18, which is an agreement between First Security Bank and the Ute Distribution Corporation? I'll ask you if you've ever seen that before. A. No, I haven't.

Q. This was never shown to you during '63 and '64 while you were employed as assistant manager? A. No, it wasn't.

Q. Were you ever advised of the existence of this agreement?

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A. Pardon?

Q. Were you ever advised that this agreement existed at that time? A. That we were their stock transfer agent?

Q. Yes. A. Yes.

Q. You knew the bank was a stock transfer agent? A. Yes.

Q. I'll just read this to you. "The corporation has been organized for the purpose set forth in its articles of incorporation, a copy of which is attached hereto and made a part hereof. The corporation--" That's UDC. "--requires a stock transfer agent, a depository for its funds, an office in which to keep its records and books of account, and where its business may be transacted, and an agency to keep its books, disburse its funds, and otherwise assist it to carry into effect its corporate purposes." Did you know that was in this agreement that First Security Bank had agreed to this instrument? A. No, I didn't.

Q. You didn't know that these facilities were to be provided by UDC, as the agreement says? A. No, I didn't.
Q. Now, I show you what has been marked and received as

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Plaintiffs' Exhibit 17A, which is denominated, "Affiliated Ute Indian Trust Agreement." Did you ever see that before?

* * * *

Q. (By Mr. Duncan) 17A, you've had a chance to look at

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it? A. What was the question?

Q. Denominated "Affiliated Trust Agreement," and 17B is attached to it. Have you ever seen it? A. No.

Q. Were you ever advised of the contents of it? A. No.

Q. Do you know what the bank agreed to do in this instrument? A. No, I didn't.

Q. Did you know that there was to be an office provided--let me read this to you, sir--

MR. BERTOCH: Just a moment. I'm going to move to strike this exhibit at this time on the grounds of immateriality and irrelevancy. Your Honor, this particular document, "Affiliated Ute Agreement," has nothing to do with this lawsuit, either these twelve or the other seventy-five. The First Security Bank, the one agreement which is admitted in evidence to which I do not object to, were made a transfer agent for UDC. This agreement made the First Security Bank a trustee for the minors of these half-bloods and for eleven or twelve individuals who were declared by the Secretary of the Interior to be incompetents. And they served as trustee and still serve as trustee. None of those minors, none of those who were declared incompetents,

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remained incompetents, have ever had a share of stock sold or transferred. First Security Bank has never permitted a sale or transfer of one share of stock of any of those individuals. So this agreement with First Security Bank has nothing to do with

the job of First Security Bank as the transfer agent. It's entirely a separate and distinct thing and has nothing to do with this lawsuit, because none of the shares were involved of these minors.

THE COURT: What do you claim for that?

MR. DUNCAN: Your Honor, we spent some pages in our trial brief on the subject; and I think we've set forth there--

THE COURT: What do you claim for it?

MR. DUNCAN: We claim for this Affiliated Ute Indian Trust Agreement that it was drawn up and signed with the purpose and intent that it be for the protection of every single mixed-blood. We will have testimony that this is what the bank represented it to be. The first paragraph provides that it shall only relate to certain named beneficiaries--

THE COURT: The objection is sustained at this time.

MR. BERTOCH: Is the exhibit stricken, your Honor?

THE COURT: Well, it may remain, subject to being connected up. He doesn't know anything about this. It

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doesn't make--

MR. DUNCAN: ~~I want to show he doesn't, your Honor. That's part of our case.~~

THE COURT: If you want to show he does?

MR. DUNCAN: I want to show he does not.

THE COURT: I thought he said he didn't.

MR. DUNCAN: I want to know if he knows specifically about this provision of paragraph 5.

MR. BERTOCH: Five? I object to that.

MR. DUNCAN: The bank told him that he was maintaining an office out there for all these people.

THE COURT: Does the other agreement that has been received provide for the maintenance of the office?

MR. DUNCAN: No. It doesn't say where. This one says in or near Duchesne County.

THE COURT: By "this one"--

MR. DUNCAN: 17A, one the Court has ruled inadmissible at this time. It says "shall maintain an office in or near Duchesne County."

MR. BERTOCH: For the beneficiaries, your Honor, of that trust agreement. And none of the plaintiffs are beneficiaries.

MR. NIELSON: Well, that just simply isn't true, Mr. Bertoch. Several of them are, and I'll direct your attention to Stewart Eugene Reed. He is one of the

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designated ones. And he's on the schedule.

MR. BERTOCH: He's presently one of the twelve?

MR. NIELSON: He's on the schedule that this trust was adopted for.

MR. BERTOCH: He is not now. Not a beneficiary.

MR. NIELSON: There are at least fourteen on the schedule. In addition to our assertion that everyone of them were under paragraph 5. There were fourteen subject to the trust.

THE COURT: The Court will rescind its order precluding the exhibit. You may proceed.

MR. DUNCAN: Thank you, your Honor.

Q. (By Mr. Duncan) In any event, Mr. Gale, you didn't know if, if such is the case, that the bank agreed as follows: "To this end the trustee--" That is, First Security Bank. "--will maintain in or near Duchesne County an agent for the purpose of conferring with such persons, agencies, and beneficiaries, and will cause an officer of trustee with authority to make decisions periodically to make himself available for consultation by such persons in or near Duchesne County." Did you know that the bank had signed an agreement to that effect on July 28, 1960?

THE COURT: Such persons being what?

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MR. DUNCAN: First Security Bank and Secretary of the Interior.

A. No, I did not.

Q. You did not know? You were never advised of the contents of 17A? A. No.

Q. Did any bank officer ever tell you what you were to do when the Indians, the mixed-bloods, came into the bank, how you were to treat them? If you owed them any responsibility of any kind? A. Not specifically, other than that we were a trust agent for them.

Q. Did they tell you what it meant to be a trust agent for them? A. No.

Q. Did you have an understanding what that meant?

MR. KLEMM: Object to his understanding as immaterial.

THE COURT: Overruled.

A. Will you state that?

Q. (By Mr. Duncan) Did you have an understanding what it meant to be a trust agent for them? A. Oh, the general meaning of trust agent.

Q. What was that? A. To assist them in any way that we could.

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Q. Now, right from some of the first sales, including Mrs. Case, who is one of the named plaintiffs--you notarized the various documents, didn't you? A. Yes, I did. I'm sure.

Q. Now, will you explain to the Court and for the record the mechanics of how a sale was effected by a mixed-blood before August 1964? A. Prior to the mixed-blood being able to sell, they had to offer their stock for sale. This was to give the Ute Indian Tribe and other mixed-bloods an opportunity to buy. This was my understanding. And then put on notice as to the stock they wanted to sell and the amount they wanted for it. And this was done in most instances that I know of prior to August 27 of '64.

Q. All right. Now, after a mixed-blood had signed this first instrument--I think it was called an offer to sell--and it was posted, where was it posted? A. Well, I was in-

formed it was posted in the Post Office, although I had never seen one.

Q. You didn't know they were posted in six places? A. No, I did not.

Q. After the posting had been done, were you aware that the agency would send the mixed-blood a letter of notification telling him that the Tribe and the other Indians, including mixed-bloods, had not purchased his shares and that he

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could then sell? A. Yes.

Q. That was called "notification," wasn't it? A. That's what the letter stated.

Q. And you knew that the letter of notification said the Indian must not sell except on the same or better terms than those that were advertised to the Tribe? A. Yes.

Q. Did you ever know of an Indian getting less--that is, a mixed-blood--getting less than he advertised for? A. No.

Q. Never? A. Never.

Q. Did you ever know of an Indian advertising that he would accept an automobile? A. No.

Q. Did you ever know of an Indian accepting an automobile? A. Not prior to his selling, no.

Q. Mr. Gale, wasn't this the way you did it several times with "Nick" Murray: You would tell Nick you had some money from out of state, you'd say: "Nick, you can pay up to \$500, and you get it as cheap as you can, and we'll split the difference?" Did you ever say that to him? A. No.

Q. Did you ever do that with him?

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A. No.

Q. Did you ever split a profit with him? A. No.

Q. Now, you received a letter at some point from Mrs. Vannoy. Do you recall that? A. Very possible.

* * * *

Q. (By Mr. Duncan) Will you read it into the record,

just the part before the verification, and then tell us-- A. "To whom it may concer: I, Bernice I. Vannoy, am this day authorizing John Gale of Roosevelt, Utah, to bargain, for, purchase, and have issued to my name Ute Distribution Corporation stock at a price of \$500 per share."

Q. Did you send that to her, or did she send it to you? A. Neither.

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Q. She came in? A. Yes.

Q. Where did she come from? A. I think she came from Arizona at this time.

Q. Who contacted her originally and told her about UDC? A. Elmo Matthews.

Q. How do you know that? A. Because he had advised me that he had.

MR. BERTOCH: May I have the date on that letter for the record?

MR. DUNCAN: Five May '64.

Q. (By Mr. Duncan) Did you talk to Elmo Matthews before 5 May '64? A. That is correct.

Q. Mr. Matthews says: "I have some people down in Arizona I can sell the stock to." Is that what he states? A. In essence.

Q. "And you get it for me, and we'll pay you a commission for getting it"? A. Yes.

Q. And you made an arrangement and understanding with Nick Murray that he was to contact Nick Murray and get if for you? A. Not necessarily.

Q. What was your arrangement with Nick Murray?

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A. When he had stock and I had someone to buy it, then I would buy it from him.

Q. And sell it to these people in Arizona at a profit to yourself? A. I had a commission on several shares.

Q. The commission varied depending on how cheaply you could buy the stock from the mixed blood? A. No.

Q. Well, if Mrs. Vannoy authorized you to buy \$500-- A. Correct.

Q. If you bought it at \$350, you made more money than if you bought it at \$400? A. Yes.

Q. So the commission varied? A. No. Not on this transaction.

Q. Now, your arrangement with Murray was that if he brought the mixed-blood in, you'd split the difference between what you could sell it for and what he had you pay the Indian for it? A. No.

Q. What was your arrangement? A. With who?

Q. Nick Murray. A. That I would buy stock from him at \$500 a share.

Q. Did you buy stock from him?

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A. Yes.

Q. Is it on this affidavit you've signed? A. That he had--it was stock that he had purchased or that he had made arrangements--

Q. So all your purchases from Nick Murray, you didn't put on your affidavit? A. Yes.

Q. Yes. They're all on here? A. Yes.

Q. In any event, how much money did Mrs. Vannoy send you? A. I don't recall how much money she sent.

Q. Does \$13,000 sound right? A. This I think was the amount that was finally there in her name.

Q. In her deposition you couldn't remember, but now you remember that you received \$13,000 from her? A. If I remember correctly, my deposition states that that was about how much there was.

Q. Did you tell Mr. Murray that you had that money? A. I don't recall telling him I had that money.

Q. Did you show him the letter from Mrs. Vannoy? A. I don't recall.

Q. Did you show him the check? A. I doubt it.

Q. Now, how much money did you receive from Carpenter,

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H. D. Carpenter? A. Now, this I don't recall.

Q. Now, so we have the Court and the record clear, you couldn't tell us at the time of your deposition, and you can't tell us now, because you didn't keep your canceled checks nor any schedules of these purchases and sales; is that correct? A. That's correct.

Q. And you can't tell us how many long distance phone calls you made, because you paid for them by check, but destroyed them immediately thereafter? A. No.

Q. That isn't your testimony? A. No.

Q. Now, looking at Mrs. Case's file--I believe that was one of the first you notarized--the document here dated 7 May '64 has her name on it, or purports to have it. It says--well, it says what it says. But you signed it? A. That's right.

Q. Did she appear before you? A. Yes.

Q. Is it a fact, sir, that certain of the names were in blank? A. This could have been.

Q. Yes. Like the name of the grantee was in blank?

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Correct? A. It could have been. Yes.

Q. How about the affidavit? You also notarized that, didn't you? A. Yes.

Q. On 7 May '64? A. Yes.

Q. And isn't it a fact that the figure \$1,400 is written in ink, and the rest of it is typed? A. Yes.

Q. And that was put in after she signed it? A. No.

Q. It was not? A. No.

Q. And she didn't know that she was selling Tillie Lerma Gyllstrom, because that was one of your out-of-state contacts, wasn't it? A. Yes. This came out of that file (handing).

Q. Now, calling your attention to page 54 of your deposition, Mr. Gale: "Question: Do you have those records, long distance calls? "Answer: No, I don't. "Question: You didn't keep the records of your long distance calls in '64 and '63?

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"Answer: No. "Question: You're sure they're gone, the records?

"Answer: Our telephone bills? "Question: Yes. "Answer: They're destroyed as soon as we pay the bill." You so testified? A. Yes.

Q. Now, from time to time, Mr. Gale, you dictated letters to your secretary, who was a bank employee by the name of Utahna Berry? A. Yes.

Q. She worked for you in the bank as a bank employee in '63 and '64? A. She was the secretary, yes.

Q. Yes. And from time to time you would send out stock certificates or letters regarding UDC stock and have her type them for you? A. Yes.

Q. Now, as a "for instance," I show you what's been marked 65A, and I'll ask you to read it. A. It says: "Glen Reed, 306 Redondo Avenue, Salt Lake City, Utah. Dear Glen: I am enclosing an assignment for you to sign to file with the corporation in connection with your agreement to sell your stock to me. I would appreciate it if you would mail this back, and upon filing it with

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"the corporation I would then be able to advance you a little more money."

Q. Signed John B. Gale, assistant manager, on First Security Bank letterhead; correct? A. Yes.

Q. And dated July 7, '64? A. Yes.

Q. So you were advancing money to Mr. Reed on that date on the purchase of his stock? A. Yes.

Q. Now, that's one you didn't list on your affidavit, did you sir? Is there any reason why?

MR. BERTOCH: Glen Reed is on the affidavit.

MR. DUNCAN: Not that he advanced him money on July 8, '64, counsel.

THE COURT: Never mind arguing between counsel. Ask your question.

Q. (By Mr. Duncan) Now, Mr. Gale, I show you what's marked 68B, and these are just the fronts, because we don't have the back, of bank money order, First Security Bank. I'm going to take you through them. \$1,400, 7/16/64, payable to First Security Bank, purchased by Jet Chevrolet; and the authorized signature is John B. Gale. Do you know what that was for? A. No, I don't.

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Q. That was a purchase of stock, wasn't it? A. I don't know.

Q. So you could sign a \$1,400 cashier's check at that time without any authorization further than you had? A. Yes.

Q. Now, on 8/11/64, again with your signature as authorized signatory for the bank, \$1,000 payable to Glen Reed, 8/11/64. And it says: "The Remitter, bank, for stock," what's that all about? A. This was probably a check that I gave him for some stock.

Q. On 8/11/64? Right? And you took it out of some of this money that you had from out-of-state buyers? A. I'd have to see who--

Q. Didn't you testify that you didn't have money at that time to buy stock? The only stock you could buy is money that other people sent you? A. This is true.

Q. So you know that money came from somebody other than yourself? A. Yes.

Q. But you don't have any records to know who it came from? A. I'd have to look at who bought his stock.

Q. In any event, you didn't tell Mr. Reed that you were

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selling it to somebody else other than yourself, did you? A. No.

Q. Did you tell him you had a lot of money or any money you were holding for out-of-state purchasers and making a commission on it? A. No.

Q. You didn't tell him that that wasn't a fair price, did you? A. No.

Q. You didn't attempt to dissuade or discourage him from selling the stock?

* * * *

Q. (By Mr. Duncan) Did you ever attempt to dissuade Glen Reed from selling the stock, telling him he shouldn't sell it? A. I probably told him he shouldn't sell it.

Q. You probably told him. Here is another one, September 22, 1964. That's before the August, '47 day. This is an \$1,800 check, and it shows that the purchaser/remitter was yourself, and it's payable to Mildred Danielson. She was a mixed-blood? A. Yes.

Q. So you were buying stock from her before September 24.

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Right? A. Right.

Q. Is there any reason you didn't put her on the affidavit? A. No.

Q. Now, here is one dated 6/15/64. Again, you sign it for the bank. It's a money order from First Security Bank, \$175. The payee is Glen Reed, and the remitter is John B. Gale for stock. Correct? A. Correct.

Q. You were advancing him money against the stock because it wasn't through being posted yet? A. It had probably been posted.

Q. Why were you advancing him money? A. Well, he had posted it, and I was buying it from him.

Q. But the letter of notification hadn't finally been received? A. Right.

Q. So before the letter of notification came that the Tribe had not purchased it, you advanced him some money? A. Right.

MR. BERTOCH: Mr. Duncan, who was that? I missed it.

MR. DUNCAN: Glen Reed.

Q. (By Mr. Duncan) Now, here is one that's kind of hard to read. 5/5/64, \$1,500. Once again, you signed a First

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Security Bank money order, and here is what you have written on

5/5/64 to Harris: "Down payment on Ute Distribution stock. Mrs. Vannoy." So this \$1,500 was sent to Mr. Harris before the Harris posting was up, as an advance against the purchase for Mrs. Vannoy through you? A. It could have been.

Q. Did you tell Muse Harris that you were purchasing for Mrs. Vannoy? A. He was selling directly to her.

Q. And you told him that? A. He knew it was, because he had made the contact with her.

Q. I see. In any event, bought the stock for Mrs. Vannoy? A. I signed the cashier's check.

Q. And you also were the purchaser, were you not? A. Well, for Mrs. Vannoy.

Q. Yes. On 7/30/64, here is a check again signed by you for the bank for \$1,690 payable to Emily Hone, and it lists the remitter as "Bank and Dick Bastian." Do you know what that's about? A. No.

Q. Isn't it a fact that you were buying that stock from the payee for Bastian in the form of a Chevrolet? A. No, sir.

Q. Now, here is one dated 7/16/64 for \$175. Another one

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to Glen Reed, who is one of the bellwether plaintiffs, signed by you, authorized signature. And the remitter is "Self." That's you, isn't it? A. Yes.

Q. Here is another \$175 that you advanced to Glen Reed? A. Right.

Q. On your affidavit you list that you actually closed with him after; is that correct? A. Yes.

Q. Here is another one to Glen Reed, 6/16/64 for \$400. Again, the remitter is "Self," and the signator is yourself or the bank? A. Yes.

Q. Same answer? A. Yes.

Q. Now, here is one 5/5/64, and it says payable to the order of First Security Bank for \$5,250. And the remitter is Vannoy. The signer is yourself. What were you doing there? A. I don't recall what that was.

Q. Isn't it a fact that you were taking money out of her check and putting it into the bank so you could write a cashier's check for the purchase of stock? A. That I don't recall.

Q. In any event, it was for the purchase of stock, because

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it's for Mrs. Vannoy? A. Yes.

Q. Now, here is one again signed by you as authorized signator? A. Right.

Q. First Security Bank money order, 7/17/64, to Western Union for \$658.58; and the remitter is "Wired to Mrs. Vannoy from savings." Do you know what that's for? A. She had went into North Dakota, and her husband hadn't gotten work, and she wanted some money from her savings.

Q. You kept the money in savings until you could buy stock for her? A. Yes.

Q. And I take it this next one, which is \$200, 6/10/64, "Savings, Vannoy," is the same thing. A. Yes.

Q. And this next one. Again, all of these are signed only by you for First Security Bank. Glen Reed is the payee. 7/16/64, \$575. "Vannoy stock." Did you also tell him that money came from Vannoy? A. I don't recall having told him.

Q. Did you tell him you were selling it to Mrs. Vannoy for more than he was getting paid for it? A. No.

Q. Which in fact you weren't?

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A. Yes.

Q. Here is another one. This is 5/5/64 for \$4,250, to First Security Bank. You sign it, but the purchaser is Vannoy. I take it that's simply to set up this account to buy stock? A. I don't know why it was made that was.

Q. In any event, you signed the check? A. Yes.

Q. It came from her money? A. Right.

Q. Here is one 9/25/64, \$550, "Bernice Vannoy." That was some more stock? A. This was some stock that she had purchased. The check wasn't signed by me.

Q. No. And now, this next one dated 5/14/64 is First Security Bank, \$3,500. Cashier's check to First Security Bank from First Security Bank, signed only by you, John Gale; but the purchaser is Laura Wood. Laura Wood was another one of your clients who was purchasing UDC stock through you? A. Yes.

Q. And this was simply the way of getting it into what? Into the working account? A. No. This would have just been held until the stock was purchased.

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Q. So you held this check from First Security to First Security for the account of Wood? A. Yes.

Q. Now, when you get a check like \$3,500, and you knew

you had it on hand, and you knew how much Wood would pay, and for how many shares-- A. Yes.

Q. And you would contact Mr. Murray and say, "You find us some stock, and whenever you pay for it, we'll split for whatever difference-- A. No.

Q. Did you ever do that? A. No.

Q. In any event, you never told the seller that you were making a profit? A. The seller?

Q. Yes. The mixed-bloods. A. No.

Q. Sometimes you told them you were buying it yourselves? A. Sometimes I did.

Q. Yes. 8/11/64. Here is another one. This is \$650, payable to Jim May. But it's signed by you, and the remitter is Phelps. This is Phelps, another one of your accounts you were holding, to apparently spill over some of the expenses. Is that what that's for?

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A. I don't know.

Q. Phelps was one of your clients who was purchasing UDC stock through you? A. Yes.

Q. Well, I don't know if any of these add very much more, sir. Let's just look at these next two. 6/8/64, Robert Reyes for \$225 signed by you. Here is one 6/8/64 to Russell Reed, \$225 to Russell Reed, signed by you. And these were both advances on stock, weren't they? A. I think so, yes.

* * * *

Q. (By Mr. Duncan) Now, Mr. Gale, at the time we took your deposition you supplied me with a copy of an affidavit. That's what it was called, and it was blank forms. You see the indication "Deposition" in the corner. Right? A. Yes.

Q. Now, the original you supplied us I believe was in blue ink or purple ink, because you mimeographed it at the bank? A. Yes.

Q. It's your testimony now that 72A is a true copy of the affidavit that was mimeographed by the bank on the

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bank mimeograph machine; correct? A. Yes.

Q. And you kept a supply of these in the bottom of your desk? Anybody that wanted an affidavit, you supplied it to them? A. Well, I don't know whether it was in my desk, but it was there.

* * * *

Q. (By Mr. Duncan) Now, in the early guarantees--that is, in '63, and the first part of '64--when you would guarantee a signature, you'd put, "Signed, sealed, and delivered in the presence of John B. Gale"; correct? A. I think this was on the stock.

Q. Yes--no, never on the stock? A. Or, on the affidavit.

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Q. Stock power? A. Stock power.

Q. Now, that stock power was a First Security bank form, wasn't it? A. Yes.

Q. And you used those throughout? A. Yes.

Q. And then you received a call, and later a letter from Mr. Calvin E. Anderson, administrative assistant to the First Security Bank in Salt Lake; and I ask you if this Exhibit 47 isn't a true copy of that letter and that you received it through United States Mails on or about the day it bears (handing). A. Yes, I would have received this.

Q. In effect, this was telling you that you were to get a signature stamp made telling you how to proceed? A. Yes.

Q. When you were guaranteeing UDE stock certificates. Perhaps we should read part of it into the record. This is a letter that Mr. Gale has identified. "We are in receipt of Ute Distribution Corporation such and such. "We note from the back of the certificate that you have witnessed Mr. Murray's signature. We feel that we should follow the same procedure with this stock as we

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do with all other stocks we transfer--that is, to indicate a proper signature guarantee of the individual signing the stock. We are therefore enclosing two assignments on which we request you have Mr. Murray endorse and then properly guarantee his signature. We are also enclosing a sample of the signature guarantee so that you will know the correct procedure for doing this." Now, Mr. Gale, you told us in your deposition about the transaction with Mrs. Wopsock. You heard her testify this morning, didn't you? A. Yes.

Q. Now, will you tell us what consideration you gave her for the two shares? A. She received cash in the amount of \$350 per share.

Q. In fact, you gave her a truck, did you not? A. No.

Q. Now, it's a little confusing in your deposition, so I'll read a few lines in front. Page 50. I think we'd better start with 49. "Question: Well, we have some of those here.

I'll dig those out in a few minutes. Now, the next one you've reported to us is Letha Harris Wopsock, one share. How much did you pay Letha Harris Wopsock? "Answer: If I can recall correctly, she sold me two

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shares. "Question: It says one here, but-- "Answer: Well, look down below. Isn't there another one? "Question: Oh, I see. You kept one share for a short time. This was the same transaction? "Answer: No, they were different dates, I believe. "Question: What did you pay her? "Answer: Three fifty." And skipping down here to line 19, counsel. "Answer: And I told her the most I could pay her was three fifty." And skipping over to the next page, 51: "Answer: Well, let me check. That was the first one for Mrs. Wopsock? "Question: That's correct."

MR. BERTOCH: What line are you on now?

MR. DUNCAN: Four. "Answer: Was it transferred the same-- "Question: The first one was 10/16/64. "Answer: Okay. Was it transferred the same date as one share from Duane Accutoroop. "Question: Yes. "Answer: Okay. These two were traded for a truck. "Question: A truck?

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"Answer: Yes. "Question: To whom? "Answer: Jet Chevrolet. "Question: And who is Jet Chevrolet? "Answer: Dick Bastian. "Question: What credit did you get for that truck? "Answer: Well, I valued the truck at \$700. "Question: So you're saying you didn't make any profit on that? "Answer: I didn't make any profit." Was that your testimony? A. Yes. May I--

Q. Is that about the Wopsock transaction? A. Yes. May I--

Q. Certainly. If that isn't clear. A. I purchased these two shares from Mrs. Wopsock, and I traded for the truck. The truck came to me, not to Mrs. Wopsock.

Q. I see. Is your testimony now, sir, that you know of no instance where an Indian traded for a truck or an automobile or tires or repairs and then certified before you that he received cash? A. That I know now, or that I knew at that time? At the time?

Q. That you knew then.

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A. No.

Q. Wasn't this the procedure that you followed on a number of cases, including some of the named plaintiffs? A car dealer would come in and sit down at your desk. In fact, some of these instances you had the paper on the car or truck. You would get a check, a certified check, and you always paid by certified check to the Indian; have him endorse it for the full amount he advertised it for, and then hand him the few dollars left, and the rest went to the car dealer? A. No.

Q. That never happened? A. No.

* * *

Q. (By Mr. Duncan) On each of the following transactions you purchased stock from a mixed-blood: Mildred Irene Denver, Louis Ballard, Leah Elinor Matheson, Glen Reed, Letha Wopsock; that's true, isn't it? A. Yes.

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Q. Now, will you tell us about your first meeting with Mr. Benson and Mr. Owens? A. Mr. Benson and Mr. Owens--Mr. Benson was from Roosevelt. They stopped me as I was going to a meeting and asked me if I would handle some purchasing of some stock for them or for some people they knew in Arizona. And I was in my car, and they were in theirs. And I said yes, I would.

Q. That would be just a little bit before this first check from Mrs. Vannoy? A. This could have been, yes.

Q. That would have been about late April or early May 1964? A. Yes.

Q. All right. Now, did Benson and Owen send you money? A. Owens sent me--no.

Q. Well, they sent you money? It just was in the form of a check from somebody else? Correct? A. Yes.

Q. And you held the check, and you showed us the fashion that you'd do it? You'd have a cashier's check issued by First Security Bank payable to First Security Bank, and you'd hold it until you purchased some stock? A. Sometimes.

Q. Do you have any idea today how many shares of UDC stock

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you purchased for these people?

THE COURT: By "these people" you mean what people?

MR. DUNCAN: Thank you, your Honor. I think that's correct.

Q. (By Mr. Duncan) For Vannoy, Carpenter, Wood, Gyllstrom, Jasper, Phelps, or anybody else? We know of those accounts. Or anybody else that any of the out-of-staters that had contacted you. A. I don't know how many shares.

Q. You don't know how many? Have no records? A. No, sir.

Q. In any event, you recall the 13,000 from Vannoy? Do you remember how much from Phelps? A. I think there was around 7,000.

Q. Was Phelps Owens' client? Benson? A. I'm not sure whose he was. He was from Arizona.

Q. Now, as I understand it, you'd have the money on hand from one of these people, such as Mrs. Vannoy or Gyllstrom or Phelps or Frost or Jasper, and you managed to buy stock at less than that figure. Sometimes you would spill half of your profit over into the account of Mr. Mathews or Mr. Owens. Is that correct? A. No.

Q. How did you compensate them for their profit? A. They were selling the stock for an amount down there.

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I was buying it for \$500. They were giving me \$50. And any amount over the \$530 went into--went to them.

Q. So you had an Owens checking account, and you had a Mathews checking account, and then you'd spill that into them? A. Yes.

Q. You'd make the deposits? A. Yes.

MR. DUNCAN: I think we'll offer those two now. These were supplied to us on demand by the bank.

Q. (By Mr. Duncan) I'll ask you to identify them first. If these two represent--these are summaries--ledger cards that you supplied us from the bank; as to deposit slips and deposits and withdrawals in the account of these two men. What is the next number, Mrs. Gibson?

* * * *

Q. (By Mr. Duncan) Are these correct copies of your bank records. A. Yes.

Q. Most of the deposits in fact were made by you for their account? A. Some of them.

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* * * *

Q. (By Mr. Duncan) Now, after the first purchase or so that you made of this UDC stock you told Mr. Murphy, who was the manager, that you were doing this, didn't you? A. Yes.

Q. And he didn't tell you you shouldn't, did he? A. He told me to do the--what I did on my own time was my own business.

Q. No bank officer ever advised you not to buy UDC stock? A. No.

Q. In fact, Mr. Murphy and Mr. Haslem knew that you were writing letters about these transactions and they were being printed--or, typed by Utahna Berry on bank letterheads? A. I don't know that they knew this.

Q. Now, at some point you received a letter from--or, a phone call from Mr. Roy Hansen of Salt Lake City. That's correct, isn't it?

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A. No. I might correct it here, so you won't have to find that. Mr. Hansen is from Spanish Fork.

Q. I'd better read you this from 104 of your deposition and ask you if this is what you said then. You discussed that you had a call and that you were told to do certain things. And then we begin the questioning: "Question: Has the bank or any officer of the bank ever consulted or talked to you or written you concerning your dealing in the stock of Ute Distribution Corporation? "Answer: Not written to me. I was talked to, yes, one time. "Question: By whom? "Answer: By Roy Hansen. "Question: Who is he? "Answer: He's our direct supervisor. "Question: Of First Security? "Answer: Yes. "Question: What did he say to you? "Answer: He said what I did as far as purchasing stock on my own was up to me. "Question: When did he tell you that? "Answer: I believe about last fall a year ago." Which would make it August of '64 or thereabouts. A. I won't change my testimony on that, other than Mr. Hansen is not from Salt Lake. He's from Spanish Fork.

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Q. But he was your direct supervisor? A. He was my direct supervisor.

Q. "Question: And how did Mr. Hansen know about that letter? "Answer: He received a telephone call from the individual who was selling to the fellow in California stating that he didn't think that I should cut into--or, use bank facilities to obtain buyers for stock that they had already found. "Question: This is what Mr. Hansen told you the caller had said to him? "Answer: Yes. "Question: And he relayed this message to you? "Answer: Yes. "Question: And what did you say? "Answer: I told him that from then on I would not interfere with any purchaser that had already been contacted. "Question:

Now, I take it from that that this purchaser that called from California had bought stock before the transaction you're talking about? "Answer: I was sending a stock certificate to him, yes. "Question: And asked him if he wanted to buy some more?

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"Answer: Yes." So when you transmitted the stock certificate from your branch out there to this man in California, you wrote him a letter and said, "I can get you some more stock"? A. This was included in my letter, yes.

Q. And it was on bank stationery and signed assistant manager? A. Yes.

Q. And Mrs. Hansen said the only thing, he didn't like you to do that on company time? A. Yes.

Q. He didn't tell you anything about your being a trustee or that you shouldn't be dealing with these Indians at all? A. No.

Q. Nothing of that kind. Now, you also testified, did you not, sir, that the question of purchasing the stock was taken up at several of the officers' meetings? That's the officers out at the Roosevelt branch? A. I think I said that one. There may have been other instances.

Q. And what was discussed? A. After this instance--

Q. No. This is before that, isn't it?

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A. I don't recall.

Q. In any event, right after your first purchase you told Paul Murphy you were buying UDC stock? A. Yes.

Q. And he didn't tell you you're not supposed to; he only said, "Do it after bank hours"? A. Yes.

Q. Even though you were writing letters during the day and Utahna Berry was typing them and you were signing them as assistant--

THE COURT: Avoid argument.

Q. (By Mr. Duncan) Yes, sir. I withdraw the question. What were your transactions with Mills Tooke of New Orleans? A. He would either wire--or, send money or have us draw a check on him and give to individuals who he had--was buying stock from.

Q. Where did you get his name for the first time? A. Oh, he called the bank, I imagine.

Q. Isn't it a fact that you got it off the transfer sheet when Clyde Murray sold him stock? A. No.

Q. And didn't Clyde Murray come in and cuss you out a little bit--

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* * *

Q. (By Mr. Duncan) Did Mr. Murray, Clyde Murray, cuss you out for going around him to Mills Tooke? A. Because I was handling stock for Mills Tooke, yes.

Q. He did do that? A. Yes.

Q. Mill's Tooke was an oil man in New Orleans, wasn't he? A. Yes.

Q. And he was buying a lot of stock? A. He was handling a lot, yes.

Q. Now, when you notarized the affidavit of Louise Allen Case, did you have her swear and raise her hand? A. I don't recall whether I had her swear.

Q. Did you with Letha Wopsock? A. I don't recall having done this.

Q. Did you do anything other than having them sign? A. Yes.

Q. What did you do? A. I asked them--if it was on the affidavit that the agency had sent--if they had received the money for the stock.

Q. All right. Now, did you do that with Mrs. Case? A. Yes.

Q. Did you do that with Richard Curry? A. If I signed his paper.

Q. Charles Reed?

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A. If I--

Q. Well, may we safely say, then, that you did it with every person including all of the named plaintiffs where your name appears as you having notarized the affidavit? A. Yes.

Q. And in every case they appeared before you? A. Yes.

Q. And that you did not know or have any knowledge in fact that any of these plaintiffs were taking automobiles or groceries or repairs? A. No.

Q. Is it a fact, sir, that on occasion when these various plaintiffs came in, including Louise Allen Case, that they were accompanied by one of these men that you have identified as being known to you as car dealers? A. Yes.

Q. In fact, that was generally the case? When they came in, there was generally a car dealer with them? A. No. I had better state, it could have been. But I don't recall each of them specifically.

Q. You mean in each case they could have been accompanied by-- A. They could have been accompanied by whoever was

purchasing the stock.

Q. I show you what's been marked as Exhibit 64W and ask

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you if that isn't a copy of the letter you sent--

* * * *

Q. (By Mr. Duncan) I've shown you 64W. You sent that on or about the date it bears? A. Yes.

Q. January 22, 1964, and you were trying to buy stock that day; correct? A. No.

Q. I read you this paragraph: "Question: In regard to your stock which has been purchased from Gloria Reed Thorngren, this is just waiting for the preparation officers to sign. As soon as it's signed, we will mail your stock certificates to you." In any event, for purposes of shortening this, I show you 64W, X, Z, AA, and AB, and ask you if you sent those on or about the date they bear.

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* * * *

Q. (By Mr. Duncan) And you've looked these through and refreshed your memory; and, as far as you know, every one that you have said appeared before you did appear before you? A. Yes.

Q. And all of those affidavits were fully filled out at the time they notified you? A. What do you mean "fully filled out"?

Q. All the numbers and letters and so on were in. Just as a "for instance," Mrs. Case.

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A. Yes. Now, the name wasn't filled in who was buying it; but other than that, yes.

Q. And that the only oath you administered was to ask them to sign it? A. I asked them if they had received this amount of money, and then had them sign it.

Q. That's also true with each of these others in here, isn't it? A. Yes.

THE COURT: I don't know what you mean by "each of these others." I guess the witness does.

MR. DUNCAN: 1A through 12A.

THE COURT: All right.

Q. (By Mr. Duncan) We've offered 60F dated May 11, 1964, to George Morris, attorney at law, signed John B. Gale, assistant manager, Exhibit 60F. Did you send that or about the date it bears? A. Yes.

Q. The original was on First Security Bank letterhead? A. Yes.

Q. And this statement appears therein: "Mr. Jay Fitzgerald entered into an agreement with Ilo Pidgeon Baldrige to purchase five shares of her Ute Distribution stock. He advanced her \$250 prior to her death." You were aware there was then an advance made prior to the posting and

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prior to the death of Ilo Pidgeon Baldrige? A. I thought she had posted them. But prior to her transferring the stock.

Q. Letter 60M. This is your handwriting, isn't it? A. Yes.

Q. Dated September 22, 1964, to First Security Bank in Salt Lake: "Dear Calvin: This letter is your authority to release the assignment I have on the Ute Distribution stock of Glen V. Reed." You sent that? A. Yes.

Q. You had an assignment on the stock of Glen Reed, then, prior to September 22, 1964? A. Yes.

Q. Calvin is Calvin Anderson you're addressing? A. Yes.

Q. What was his position at that time with the bank? A. He works with the stock transfer department.

Q. I show you what's been marked Exhibit 73. This is a letter dated May 5, 1965, to First Security Bank, Belding, Michigan, signed John B. Gale, assistant manager. Did you send that on or about the date it bears? A. Yes.

Q. Signed for you by a bank secretary? A. Yes.

Q. And in it you said: "I am very sorry to have delayed

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answering your letter of April 15 in regard to Monte R. Montes wanting to borrow money against his Ute Distribution stock. This stock is in a corporation which has 4900 shares and has no liquid assets. They have part interest in the oil and mineral rights on the Ute Indian Reservation located in Utah. The stock has been selling from \$300 to \$500 per share, but there is no certain market for it." A. Yes.

Q. Exhibit 60P. This is a letter you received, is it not, on or about September 8, 1964, from Calvin E. Anderson, administrative assistant to First Security Bank, and signed by Mr. Anderson? A. Yes.

Q. You're familiar with the signature? A. Yes.

Q. And this statement: "We note from the letter received from the board of directors that Mr. McMurdock has made an assignment of this stock to First Security Bank of Utah, N.A., Roosevelt Office. Is this assignment still in force, or can you give us a letter releasing him from this assignment?" So First Security Bank had taken an assignment of this stock prior to September '64? A. This was dated September '64. So it had.

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* * *

Q. (By Mr. Duncan) Now, I show you--who is J. H. if you know, as a secretary, of February '64? A. She was Jane Haddon.

Q. And do you know of the truth of this statement? This is what purports to be a letter from Merrill Millett to Jay Fitzgerald in Walnut Creek, February 11, '64. It's a copy. It purports to be sent by Merrill Millett, assistant manager. You knew Mr. Millett? A. Yes.

Q. He was working with you in the office out there? A. Yes.

Q. And he says in here: "John says that there is still a lot of Indian stock available. If you are interested in more, please let him know." Did you tell that to Mr. Millett? A. I don't recall having told him. But I could have.

Q. Do you know who Jay Fitzgerald was? A. Yes.

Q. And who was Jay Fitzgerald? A. Jay Fitzgerald used to be a former Home Administration administrator in Roosevelt, and he transferred to California.

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* * *

Q. (By Mr. Duncan) Now, Mr. Gale, I'm now going to make reference to what has been marked as Plaintiffs' Exhibit 58, which purports to be a copy of the minutes of the board meetings of the various meetings of the Ute Distribution Corporation, and I'm going to--counsel, I'm referring to page 4

of February 13, 1964, minutes. I'm going to read you a statement that appears in these minutes and ask you if you know anything about it. "President Sixkiller reported that she had informed Mr. Gale that no more certificates would be signed until the selling stockholder has received his money as advertised for the sale of his stock to the members of the tribe. Mr. Gale informed President Sixkiller that the buyer deposits part of the money in the bank (10 percent or more), and also the balance due is kept in the bank until the certificates are signed. Then it is released to the seller." Did you make that statement to President Sixkiller? A. I don't recall, but I could have.

Q. In fact, then, it was not true, if you did make the statement? A. No.

Q. No, it was not true?

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A. This could have been. Very true.

Q. That in every instance there was ten percent deposited with the bank when a sale was made? A. No. It wasn't.

Q. It wasn't. And if you made the statement, where Mrs. Sixkiller said you did, it is not correct? A. To my knowledge I don't remember making that statement.

Q. Now, referring to February 17, 1964, the minutes of the directors meeting of Ute Distribution Corporation, on the first page--and they've numbered paragraph 2: "President Lena Sixkiller informed Mr. Morris that Mr. John B. Gale, First Security Bank official, was handling all sales of stock and the signing of the new certificates. He requires the purchaser to deposit 10 percent or more of the selling price with his bid. The balance is also deposited in the bank to be released to the seller when the certificate is signed. Old second-hand cars are not accepted." Did you make this statement, or those statements, to Mrs. Sixkiller? A. I don't recall having made that statement.

MR. DUNCAN: Your witness.

* * * *

CROSS-EXAMINATION BY MR. BERTOCH

Q. Refer to Exhibit 102, Mr. Gale. Will you turn to the last page that says, "Information from John Gale"? A. Yes.

Q. Now, you see the first item there indicates stock sold to Frost and Jasper; is that correct? A. Yes.

Q. I'm going to ask you about some of these to see if this information is still correct or if later study of

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your records indicates there was any change. You have indicated that you bought a share of stock and that you sold it to Frost and Jasper. Now, is that true, there was just one? A. There was one to each of them.

Q. There was one to each of them. Now, do you know from which half-blood you bought those two shares of stock?

A. No, I don't.

Q. You don't recall that, is that right? A. No.

Q. Is it correct that you paid, and the purchase price was \$500 each, for those two shares of stock? A. Yes.

Q. And is it correct as it appears on here that the sales price was \$500? A. Yes.

Q. And that you made what? A \$25 commission on each one? A. No, I got \$25 for both of these.

Q. You got \$25 for both of them? A. Yes.

Q. Not from each one? A. No.

Q. Is that correct? All right. And I call your attention to--you have on here, "Sold to Gyllstrom." Now, did three shares of stock that you purchased from the half-blood go to--did you resell to a man by the name of Gyllstrom?

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A. This was a lady, yes.

Q. A lady by the name of Gyllstrom. How much did you pay the half-blood for those shares of stock? A. I didn't buy these from a half-blood. I don't recall who I got these from.

Q. You bought them from a-- A. I don't remember who they came from.

Q. But it was not a half-blood? Was it from an Indian? A. I don't recall who I got these from.

Q. Well, do you know whether it was from an Indian or not? A. Well, yes--well, the stock was in an Indian's name when I transferred it.

Q. But you don't know whose name? A. No.

Q. You paid \$500 a share for those three shares, is that correct? A. Yes.

Q. And you received \$530, is that correct? A. Yes.

Q. And is it true, Mr. Gale, that you sold some ten shares of stock to Mr. Woods? A. Yes.

Q. Did you buy that from a half-blood? A. They were in a half-blood's name when they were

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transferred. I don't recall who I bought them from.

Q. How much did you pay for those shares? A. Five hundred.

Q. And you sold them for how much? A. I got \$530.

Q. That was the sales price, is that right? A. Yes.

Q. All right. \$530 a share, is that correct? A. Yes.

Q. Then is it true that you purchased five shares from a half-blood and sold them to Mr. Phelps? A. Yes.

Q. How much did you pay for those? A. Five hundred.

Q. How much did you get for those? A. \$530.

Q. That's for each share, is that right? A. For each share.

Q. Grant Neilson did you sell 15 shares to him? A. Yes, I did.

Q. From whom did you buy those, do you know? A. I think these were some that Clyde Murray had.

Q. And you bought them from Clyde Murray.

Q. How much did you pay for them? A. I paid \$400.

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Q. And you sold them for \$500 a share, is that right? A. Yes.

Q. Clyde Murray is a white man, is that right? No. Indian blood? A. No Indian blood.

Q. He was a businessman of Roosevelt, is that right? A. Yes.

Q. And is it true that you made that purchase from him and the sale to Grant Neilson sometime in 1964? A. Yes.

Q. Do you remember, have any record of, a more exact date than that? A. It was sometime in the winter, because I was remodeling my home, and Mr. Neilson came up while I was doing the remodeling and completed the transaction at my home.

Q. Is it true that you bought five shares from a Matheson in 1964? A. Yes.

Q. Who is Matheson? A. This was a Leah something Matheson. She was from back East. She was a mixed-blood.

Q. She was a mixed-blood? A. Yes.

Q. She was not a member of the tribe here? A. No. She was a member of the Ute Distribution Corporation.

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She was a Ute, but she had married and moved back East.

Q. I see. And you paid how much for those shares? A. I paid \$500.

Q. And you sold them for how much? A. Five and a quarter?

Q. You sold them to a Mr. Shaw, is that correct? A.

Yes.

Q. And are the other items then listed on Exhibit 102? The listings on here, are they correct so far as you know now, showing the number of shares, purchase price, person to whom sold, the sales price, how much profit or commission you made, and from whom bought; are those all correct? A. Yes.

Q. Now, any of the others that appear on here, purchased from someone other than a half-blood--is it true that you purchased some others from one G. R. Murray? A. Yes, I did.

Q. Do those appear the fourth line from the bottom? A. Yes, they do.

Q. Did you purchase those from G. R. Murray? A. Yes.

Q. And he was a businessman from Roosevelt at that time, is that right? A. Yes, he is--was.

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Q. How much did he pay for those shares? A. On the one, I don't recall. On the other, I paid \$350.

Q. Then you sold to a Dee Mansilla? A. Yes.

Q. Is that right? For \$400? A. Yes.

Q. Are there any other persons listed there from whom you purchased stock that were not half-bloods and had no Indian blood at all, or does that cover them all? A. I think this covers them all.

Q. All right. Now, will you tell us about when it was when Glen Reed came to you and talked to you about the sale of his stock? A. I don't recall the date of the--when he came out. He came out in the fall of the year--

Q. Of what year? A. This would have been in '64.

Q. The fall of '64 or the fall of '63? A. I believe it was--it was the late summer of '64.

Q. Was it after this termination date of August 27, 1964? A. I don't think it was after termination, no.

Q. Well then, it was sometime before August 27, 1964, is that correct, when he first came to you to talk about selling the stock to you?

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A. Prior to August, yes.

Q. All right. Now, will you tell us the circumstances of that, the conversations you had with him with regard to the purchase or sale of his stock? Tell us in substance what you recall that he said and what you said. A. Mr. Reed came into the bank and asked to talk to me, and I stood up and talked to him in the foyer of the bank, and he said he wanted to sell

some stock, five shares of his Uta Distribution stock, and I asked him if he had advertised them, and he said no. I said, "How much do you want for them?" And he said, "I don't know." He says, "How much will you give me for them?" And I says, "I've been buying them for three and a half." And he says, "Well, I'll sell them." I says, "Well, you have to advertise them first." So he says, "Well, how do I advertise them?" I said, "You'll have to go to Fort Duchesne, because I don't know." This was prior to 2 o'clock in the afternoon, because otherwise he wouldn't have been able to come in the bank. So he went over to Fort Duchesne, I presume, and advertised his stock, and I don't know when he came back in to talk to me, but he came back in and said that he had advertised his stock and could I advance him any money on it, and which I did. In consideration of the advance of the money, I took an assignment on his stock and on the

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dividend and filed it with the corporation.

Q. And then you know at what price he advertised his stock? A. He advertised his stock for three and a half per share.

Q. And later did you purchase his stock, then, after the advertisement was completed? Is that correct? A. Yes, I did.

Q. How much did you pay him for the stock? A. I paid him \$350 a share.

Q. The amount for which it had been advertised, is that correct? A. Yes.

Q. Now, the stock that you purchased for Mrs. Vanney, do you know how much he paid for the stock which you sold to her? A. The stock that I bought for her prior to termination was \$500 a share.

Q. Did you buy some for her after termination? A. I don't recall when she closed her account out. She wrote and told me one time that she had enough stock and she didn't want to buy any more.

Q. All right. Now, did you buy some stock for a Mills Tooke? A. Mills Tooke?

Q. Mills Tooke?

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A. Yes.

Q. Do you recall how much you paid for that stock? A. I don't recall. Generally, Mr. Tooke had made arrangements

with someone else in the Basin, and he would just send the money to the bank, and I would handle the transaction for him there.

Q. You mean you did not actually buy the stock for him? Or did you on some occassions? A. I gave the money to the individual for the stock, but generally I think there were two instances where I actually bought stock for him, but--

Q. Do you recall on those occasions how much you paid for the stock? A. No, I don't.

Q. Do you know how much Mr. Tooke paid for the stock when he purchased it from you, or from whom ever he purchased it? A. No, I don't recall what he paid for it.

Q. How much did Mrs. Vannoy pay? A. \$500 a share.

Q. \$500 a share? A. Yes.

Q. That was the same amount for which you paid the purchaser, is that right? A. Correct.

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Q. So you made no profit or commission at all on the purchase for Mrs. Vannoy, is that right? A. That's correct.

Q. Did you make any profit or commission on the stock that was sold to Mills Tooke? A. I think on two occasions Mills Tooke gave me \$25 for handling transactions for him.

Q. \$25 on each? A. On each of the two occassions.

Q. What was the purpose in your mind of this affidavit which we've been talking about here which some of these good people signed before you? A. So that they would know that the stock they had in their name had been duly advertised for a certain amount and they were to receive this amount.

Q. Do you know if in your mind the First Security Bank required that this be notarized and signed before they would transfer the stock? Did you know that? A. We had to have a letter from the agency that they had been duly advertised.

Q. Well, now, I'm not just talking about the advertising. I'm talking about the affidavit in addition to the advertising; the bank had to have a certificate from the agency saying that the stock had been advertised before the bank would transfer the stock. Is that right?

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A. Yes.

Q. Now, in addition to that, what did the bank require, if anything, in connection with this affidavit? A. That it be notarized, and when we sent the affidavit over to the agency, that there was a stock power with it.

Q. So when these good people came in to see you, they signed a stock power, is that right, indicating they wanted to sell the stock; is that right? A. Yes.

Q. And you guaranteed the signature? A. Yes.

Q. And then they signed before you an affidavit to the effect that they had received a certain amount of money for the stock, is that right? A. Yes.

Q. And they signed that in your presence, and you notarized their signatures; is that right? A. Yes.

Q. And then did you do anything about sending the stock power, and the affidavit over to the agency, or did somebody else do it? A. Generally someone else did. There were times when we put it in the mail and sent it to Fort Duchesne.

Q. Then is it true that the agency had to send this material in to Salt Lake from the bank to the transfer

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agent before the stock could be transferred? A. Yes.

Q. The bank in Salt Lake required this affidavit signed, and the bank required a letter from the agency saying that the agency had received the affidavit? A. Yes.

Q. The bank also required the stock power with the signature guarantee, is that right? A. That's correct.

Q. And then only after that they would transfer the stock; is that correct? A. Yes.

Q. Now, did you talk to these half-bloods when they came in before they signed this affidavit which talked about the amount of money which they had received or were receiving? A. Yes.

Q. Did you do this routinely, regularly? A. Yes.

Q. Why did you ask them? A. Because I knew it had to be advertised, and I knew that there was at one time talk that the Tribe might buy their stock; and when the Tribe didn't, and it had to sell for the amount that they had advertised, and--

Q. Yes. Well, what in substance did you ask them or say

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to them before they signed the affidavit? A. I said, "How much money have you received for your stock?" And I would say, "How much did you have it advertised for?" Sometimes they would have their advertisement, and sometimes they wouldn't. And if they hadn't filled in the amount, I would fill it in and have them sign the affidavit.

Q. Now, did you in any instance have any one of these half-bloods tell you that they were getting less than they advertised it for? A. No.

Q. Did you ever have any of them tell you that they were getting any kind of merchandise instead of cash? A. No.

Q. Of course, do you know of anything in the Ute Distribution Corporation articles or in law that says they couldn't take the equivalent of cash or products in cash? A. No.

* * * *

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MR. BERTOCH: Mr. Gale, how many shares of stock did you purchase altogether that went in your own name from these mixed-blood Indians? A. Into my own name?

Q. Yes. A. I think there was about fifteen or sixteen, seventeen shares.

Q. Do you recall how many after August 20-- A. Pardon me. This would have been all that I would have put into my name.

Q. Sixteen or seventeen was all that you put into your name, is that right? A. Yes.

Q. Including before or after August 27, 1964, is that correct? A. Yes.

Q. How many shares of stock from mixed-bloods did you buy altogether, if you know? A. Without the ones for Mrs. Vannoy, I bought 77 shares. Now, Mrs. Vannoy, I think, with what she bought and what I purchased for her, I think she had around 80, she and her husband, 80 to 85 shares.

Q. All right. Were all of these 77 purchased from mixed-bloods? A. No.

Q. All right. How many were purchased from mixed-bloods?

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A. All but 17 shares. It would have been about 60 shares.

THE COURT: Did this 77 shares that you first mentioned include the shares you bought for your own account?

THE WITNESS: Yes.

Q. (By Mr. Bertoch) Now, let's go back to the 77 again. How many of those 77 did you buy from mixed-bloods? A. I think there was around 61--or, 60.

Q. Sixty? A. No--right in that neighborhood.

Q. Didn't you figure that out for me exactly? Do you have some notes on it somewhere? A. Well, let me see. I bought 17 shares prior to August of '64. Seventy-seven shares altogether.

Q. I want to know altogether how many shares you purchased from mixed-bloods either before or after August 27, 1964. A. Prior to--after?

Q. Before or after. Altogether, how many did you purchase from mixed-bloods? A. There would be 79.

Q. Is that your answer? A. Let's look here just one minute. No, there would have been 80. There were three that I didn't have on this other list.

Q. Eighty that you purchased from mixed-bloods, or 80

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that you purchased altogether? A. Eighty that I purchased altogether.

Q. How many of those 80 were shares that you purchased from mixed-bloods? A. Let me figure just one minute. Sixty-five shares.

Q. All right. And then the other 15 you purchased from people who had no Indian blood; is that correct? A. Pardon me. I got the wrong answer here. It would be 15 and 3. It would be 18. It would be 62, and 18 that I had purchased from other people.

Q. Now, tell me if you can from your records there, where you got these 18 shares that you purchased from persons other than mixed-bloods--from whom you purchased them. A. I purchased 15 shares from Mr. Murray, Clyde Murray.

Q. All right. How much did you pay for those? A. \$400.

Q. A share? A. A share.

Q. Did you purchase those all at once? A. Yes.

Q. When did you purchase them? A. They were purchased --this was the purchase in the fall of '64.

Q. All right. Where did you get the other three from?

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A. One from Duane Accutoroop and two from Letha Wopsock.

Q. We're talking about white people now, not mixed-bloods? A. Pardon me. The other three came from Richard Murray.

Q. How much did you pay for those? A. I don't have a record on the two shares. One share I bought for \$150.

Q. From whom? A. Mr. Murray.

Q. When did you buy that? A. July 4, 1964.

Q. And Clyde and Richard Murray were businessmen of Roosevelt at that time, is that right? A. Yes.

THE COURT: What month did you purchase the Clyde Murray stock?

THE WITNESS: It was in the fall. I don't have the month, your Honor. It was in the fall--

THE COURT: By "fall" you mean after August?

THE WITNESS: It would have been--I was remodeling in the middle of the winter, and it would have been in November or December.

THE COURT: Of 1964?

THE WITNESS: '64, yes.

Q. (By Mr. Bertoch) Now, Exhibit 64B, which is in evidence, Mr. Gale, says: "Mr. Mills Topke instructed me--" This is

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a letter from W. E. Edgar, president of First State Bank of Groves to Paul Murphy. Murphy was manager of the bank of Roosevelt on the February 15, 1964, is that correct? A. Yes, sir.

Q. Now, it says: "Dear Mr. Murphy: Mr. Mills Tooke instructed me that he had talked to you; and before this stock can be transferred from Clyde Murray to Mr. Tooke, you have to have a cashier's check in the amount of \$5,505 plus \$3.40 which I understand is for transfer fee." Now, do you know what that transaction represented, how many shares of stock that represented? A. No, I don't.

Q. You're not acquainted with that transaction? A. No.

Q. 64B, a telegram from First State Bank of Groves, Texas, to Paul Murphy, manager First Security Bank and Trust, in which the First Security Bank of Groves, Texas, says: "We will pay draft with stock attached \$5,505, ten shares Ute Distribution Corporation from Clyde Murray to Mills Tooke." Are you acquainted with that transaction at all? A. No, I'm not.

Q. Ten shares for \$5,505. Is that correct? A. Yes.

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Q. I call your attention to Exhibit 64G, a letter from Richard Lee Tooke to Paul Murphy, manager of the First Security Bank in Roosevelt: "Enclosed please find three checks to Clyde R. Murray: \$2,500 from Thomas M. Hall, M.D., of 185 West Utah Avenue, Payson, Utah, for five shares of Ute Distribution

stock." That would be \$500 a share, is that correct? A. Yes.

Q. You knew, of course, Clyde Murray? A. Yes.

Q. Did you know Thomas M. Hall, M.D.? A. No, I didn't.

Q. I call your attention to 64I, a letter from Verl Haslem, assistant manager to Walter K. Howard, consulting geologist, Olney, Illinois: "Dear Mr. Howard: I am enclosing Ute Distribution stock Certificate No. 763 written for 10 shares showing you and your wife as owners. Her money for \$5,000 in payment for this has been delivered to Margaret Van Sprouse." That would be \$500 a share, is that correct? A. Yes.

Q. This is dated June 9, 1964. Do you know Walter K. Howard? A. No, I don't.

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Q. You knew Verl Haslem, of course, assistant manager at the bank? A. Yes.

Q. Did you know Margaret Van Sprouse? A. Yes.

Q. Who is she? A. She's the wife of Leon Sprouse, who is a contractor. She's a blonde lady.

Q. Is she a mixed-blood? A. She's mixed-blood.

Q. Now, I assume you were aware at this time that these exhibits cover the period of 1964, that there were, of course, several sales of this Ute Distribution Corporation stock between people who were not half-bloods; that's true, isn't it? A. Yes.

Q. And we've seen several examples here where such sales were at \$500 a share, is that correct? A. That's correct.

Q. And were you aware of, generally speaking, what the sales price was in 1964, the range of the sales price of UDC stock between persons who were white; that is, between persons neither of which were half-bloods? A. Yes.

Q. What was that range?

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A. It was right in the neighborhood of between \$500, sometimes 550.

Q. Were there any sales for less than that during that period of 1964 between whites? A. No, I don't recall whether there were.

Q. Do you recall some have bought yours? A. I bought some for less.

Q. Did you sell some for less than that? A. Yes. I bought some myself from other people who were not members of the Tribe.

Q. You bought some shares, you've testified, for \$350 a share from another person who did not have Indian blood; is

that right? A. That's right.

Q. People who were businessmen, is that right? A. Yes.

Q. Did you buy some other for \$400? A. Yes.

Q. From a businessman in Robsevelt, is that correct?

A. Yes.

Q. You sold some to Mr. Grant Neilson, is that right?

A. Yes.

Q. For how much? A. \$500--or \$400.

Q. \$400 a share? And that was 15 shares?

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A. Yes.

Q. Who is Grant Neilsen, and what does he do? A. Pardon me. I sold them to him for \$500. They were purchased from Mr. Murray for \$500.

Q. \$400 a share. A. And Mr. Neilsen, he has a lumber yard in Springville, I believe it is.

Q. Have you ever had one of these good people, either these twelve who are bellwether plaintiffs here, or any one of the other 85 ever come to you and complain about the price you paid them for the stock that you bought yourself or bought and sold to someone else? A. No, I haven't.

Q. Did you ever pay less than \$350 a share for mixed-blood stock? A. No.

Q. Of course, you've already testified to numerous occassions you paid \$500 a share as appears on Exhibit 102; is that correct? A. That's correct.

Q. Did you ever sell shares for more than \$530 a share.

A. No.

Q. Now, why was it, if you know, Mr. Gale, that these people came in to you to have you guarantee the signatures and notarize the affidavit?

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A. The physical layout of the bank--maybe I'd better go back just a step. Prior to my coming to the bank, the corner of the bank that I occupied used to be rented to an insurance company, and he was a notary public. And after we needed the room, we asked him to move, and we moved our Time-Way department into this section, into this corner. The physical layout of the bank is if we use this room as an illustration, your Honor, the front doors would be to the west, and as they come through the doors they would walk straight into my section, into my area. The other officers were off against the south wall, and they would be probably busier than I would be, because they would take the

general run of the public, because I was in installment loans and collections, and I would generally be free so that I could notarize signatures.

Q. Did you understand it to be part of your obligation as an employee of the bank to guarantee the signatures on these shares of stock? A. Yes, I did.

Q. The bank required that? That's true, isn't it? A. Yes.

Q. That is, at least, the bank required you or some employee of the bank guarantee the signatures? A. It had to be an officer of the bank.

Q. You understood that to be part of the bank's job as

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a transfer agent, is that right, to see that the signatures were guaranteed on the stock powers; is that correct? A. That's correct.

MR. BERTOCH: That's all I have.

CROSS-EXAMINATION BY MR. KLEMM

Q. As a matter of fact, Mr. Gale, there was a real good market for that stock out in the basin, wasn't there? A. Yes.

Q. There were a lot of people that were buying, and there were a lot of people that were selling? A. Yes.

Q. As a matter of fact, people were coming to your office almost daily to have these affidavits filled out; isn't that correct? A. That's correct.

Q. And they brought with them the particular mixed-blood member of the tribe; isn't that correct? A. Yes.

Q. Now, you didn't get the forms for these affidavits from the Indian agency, did you? A. No, sir.

Q. Do you know where they came from? A. No, I don't.

Q. The occasions when you sent the affidavits to the

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agency were those occasions in which you bought the stock; is that correct? A. No--you mean that I put them in the mail?

Q. Yes. A. No. I did it on other occasions also.

Q. As a convenience to the customers? A. That is true.

MR. KLEMM: That's all.

* * * *

REDIRECT EXAMINATION BY MR. DUNCAN

Q. I'm going to read you part of this and ask you if you've ever seen this letter or have been advised of the contents, a letter from John S. Boyden dated July 22, 1959, addressed to First Security Bank of Utah, Salt Lake City, Utah. "Gentlemen: You've been retained as transfer agent for the Ute Distribution Corporation. You are also probably to act as trustee for the minor children of the mixed-blood members of the Ute Indian Tribe. I call your attention to a paragraph taken from the

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minutes of said corporation at Fort Duchesne January 12, 1959 at 2:30 p.m. which is as follows: 'The board of directors by unanimous vote directed Attorney John S. Boyden to write a letter to First Security Bank of Utah, N.A., asking said bank as transfer agent to discourage the sale of stock of the Ute Distribution Corporation by any of its stockholders and to emphasize and stress to the said stockholders the importance of retaining said stock.

"This direction is self explanatory, and we trust you will impress upon anyone desiring to make the transfer that there is no possible way of determining the true value of this stock. It simply represents their distributive share of the remaining funds to be derived from the balance of oil, gas and minerals of the reservation, the proceeds from any judgments to be obtained from litigation against the United States, and any other assets that were not susceptible to equitable or practicable distribution under law which provided for the separation of the property of the mixed-blood members from the Ute Indian tribal assets. Because of the peculiar nature of this corporation, the board by way of by-laws or otherwise contemplates discouraging or prohibiting the mortgaging or pledging this stock."

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Were you ever shown this letter? A. No, sir.

Q. Were you ever told about the contents? A. This is on the front of the stock certificate, but I was never told of the contents of this letter.

Q. You saw the front of the stock certificates, I take it, prior to some of these sales you've been telling us about?

A. I don't recall whether it was prior or after.

Q. In any event, I'm asking you about this letter. Did you ever see it, or were you advised of the contents? A. No.

Q. Did you ever stress or emphasize the importance to these people that came in, the importance of retaining the stock? A. Yes.

Q. You did. Now, perhaps you could tell us, Mr. Gale, which of the bellwether plaintiffs you tried to discourage from selling their stock. A. I don't recall any particular ones. But I had in the past advised them if they could possibly hold on to it, not to sell it.

Q. Do you recall having advised any of the bellwether plaintiffs? A. I don't recall.

Q. I'm going to show you Exhibit 88-0 and ask you, is

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that your guarantee on there? A. No, sir.

Q. Whose is it, do you know? It's a First Security stamp? A. No, I don't believe that's a First Security stamp.

Q. All right. Now, there is no question about this 88-0 stock power, is there? That bears your signature, doesn't it? A. That does.

Q. Did Stacy Reed appear before you at that time? A. Stacy Robb Reed, Jr.? He must have.

Q. Yes. Now, you testified, did you not, that when the seller was not a mixed-blood that you simply directed that it be transferred; didn't go through the posting and advertising? A. This is correct.

Q. How did you know who was a mixed-blood and who wasn't? A. Well, by their statement. If Mr. Murray came in, I knew he wasn't a mixed-blood.

Q. Are you saying that you knew, then whether each of the sellers that came to you, by looking at him, whether he was a mixed-blood? A. No.

Q. The fact is, you had the roll and the list? A. No, I didn't.

Q. How did you know whether to transfer a given person's

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stock or whether he was a mixed-blood? A. Whether he had advertised?

MR. BERTOCH: This is ambiguous. He never testified he did the transferring. He didn't do the transferring, if that's what you mean. You asked him as to the transfer. He has not testified to the transfer. He has testified the transfers were

made by the Salt Lake officer.

THE COURT: Well, the question is, I take it, would be understood to be: How did he know whether the people that came in to him with regard to the sale of stock were mixed-bloods or not; and you've indicated generally that you took their word for it or you may have happened to know them personally?

A. This is correct.

Q. (By Mr. Duncan) Now, if you knew that Mr. Murray was selling stock to you, for example, you didn't require any posting of any kind? You just sent it into Salt Lake for transfer? A. That's correct.

Q. Even though it was before August 27, 1964? A. Yes.

Q. You saw the restriction that's printed on the certificate, though, didn't you? A. I'd have to see it.

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Q. (By Mr. Duncan) When did you first see the Ute Distribution Corporation stock certificate? A. I think the first occasion I had to see these was when the bank in Salt Lake sent some out for the corporation officers to affix their signature and seal.

Q. This was in what--April or May of '64? A. Could have been. I don't recall the date.

Q. And I take it at that time you read the notice of restriction on transfer on the back (handing)? Would you read it out loud? A. "Notice of restriction on transfer. Transfer of this certificate at any time prior to August 27, 1964, to a person not a member of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, as defined in Public Law 671, 83rd Congress, approved August 27, 1954, 68 Stat. 868, shall be invalid unless the certificate of the superintendent of the Uintah and Ouray Reservation is endorsed thereon showing that a prior and proper offer has been made to members of said tribe in accordance with law and the

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regulations of the Secretary of the Interior."

Q. Now, Mr. Gale, did I understand you to testify that you received no profit on the purchases for Mrs. Vannoy? A. That's correct.

Q. Did you call it something else? Did you get a commission? A. No.

Q. And so if Mr. Murray and you were together on a Vannoy sale, your testimony is you made no profit? A. That's correct.

correct.

Q. She authorized you to buy stock at \$500 a share?

A. This is true.

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Q. How much did you return to her? A. Oh, there were, I think, two instances where I mailed her some money when she requested it.

Q. We have both those in evidence? A. Yes.

Q. And all the rest of it was spent on stock? A. No, when she--I don't recall when it was. It was just prior to an interest-paying period that she requested the balance of her money sent to her, when I did. And I think it was right in the neighborhood of \$900.

Q. How much did you return? A. I think it was in the neighborhood of nine hundred. Nine hundred plus the six that we're--

Q. So you spent \$11,000 or \$12,000 of hers? A. Yes.

Q. At about \$500 a share. That would be 250 shares alone, or 260? A. I don't know.

Q. All of the stock that shows in these records as going to Vannoy was purchased by you? A. No.

Q. Did somebody else buy for her? A. No--well, yes. She bought for herself.

Q. How about Jasper? Do you know of Jasper's buying any of this stock other than through you?

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A. No, I don't.

Q. And Phelps? A. I don't recall.

Q. Now, you testified that some of these--the highest sale you knew was \$500. How much were these good people in Arizona paying for it through Mr. Mathews. A. Some of it was six and a half.

Q. And seven? A. I don't know.

Q. And you offered to buy it for them for a little less? Mr. Mathews became angered? A. I offered to sell to them.

Q. For less? A. Yes.

Q. And Mr. Mathews became angered about it? A. Yes.

Q. So we won't burden the record or the Court, the transfers, the early transfers to Mrs. Vannoy, were all yours?

A. No.

Q. Did she buy other than through you? A. Yes.

* * * *

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MR. DUNCAN: That's all we have.

RE-CROSS-EXAMINATION BY MR. BERTOCH

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Q. Isn't it true that 13,000 shares, five hundred--or, you paid \$13,000 for 500 shares; that would represent 26 shares; is that correct? A. Yes.

Q. Is my question clear? A. Yes.

Q. So doesn't that \$13,000 involve 250 shares? It involves 26 shares? A. Yes.

Q. That you bought for Mrs. Vannoy? A. That I bought or she bought.

Q. Yes. Do you know of any transfers of stock that were made prior to August 27, 1964, that were not advertised and certified by the agency to have been properly advertised? A. No, I don't.

MR. BERTOCH: That's all I have.

* * * * *

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STEWART EUGENE REED called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DUNCAN

Q. Will you state your name? A. Stewart Eugene Reed.

Q. How old are you? A. Twenty-seven.

Q. Where do you live? A. 3825 Canyon Lake Drive, Rapid City, South Dakota.

Q. Were you a minor at the date of--well, when did you reach 21? A. July 21 of 1961.

Q. 1961? Are you the same Stewart Eugene Reed that appears on Schedule A, Exhibit 17-B? And your mixed blood number was then 361? What's you? A. Yes.

Q. Right? Now, when did you first sell your stock, Mr. Reed? A. The latter part of '63 somewhere.

Q. The latter part of '63. Did you make it in more than

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one sale? A. I made two sales.

Q. The first 5 shares to whom? A. Clyde Murray.

Q. How did you come to sell it? A. Well, I needed a car, and I wanted some money. So I went down and sold it.

Q. You went down and saw the car at Mr. Clyde Murray's car lot? A. Yes.

Q. When did you first post it for advertising? A. Right around November.

Q. Was it the same time you talked to Mr. Murray? A. Yes.

Q. Same day? A. Same day.

Q. When did you get possession of the car? A. The latter part of October.

Q. Before the posting was up? A. Yes.

Q. Is that right? A. Yes.

Q. Did you get any cash? A. I received \$400..

Q. \$400. What did you post it for?

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A. \$2,500.

Q. How much? A. \$2,500.

Q. So you got \$400 on a car? A. Yes.

Q. Is that right? Where did you close this transaction; that is, where did you sign the stock power? A. In the First Security Bank in Roosevelt.

Q. Who was present? A. Mr. Murray, myself, and Mr. John B. Gale.

Q. Which Murray? A. Mr. Clyde Murray.

Q. Clyde Murray? Was anything said about what you were getting for your stock? A. Yes. I believe so.

Q. Well, what was it, and who said it? A. Mr. Gale asked me if I was getting the \$2,500 that I advertised, and I did receive it at the bank. I received the \$2,500 cashier's check.

Q. What did you do? Did you endorse the check? A. I endorsed the check.

Q. What happened to it? A. I gave it back to the bank.

Q. Gave it back to Mr. Gale? A. Yes.

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Q. What did he do with it? A. I don't know.

Q. In any event, Mr. Clyde Murray was paid, as far as you know?

MR. KLEMM: I'll object to the leading questions.

THE COURT: It is leading.

MR. DUNCAN: I'm just trying to shorten it.

Q. (By Mr. Duncan) Did Mr. Clyde Murray then at any

time thereafter ask you for the balance due on the automobile?

A. Yes, he did.

Q. How much was due? A. \$400.

Q. How much was the car advertised for sale at? A. Originally he stated the amount of \$1,800 to me when I took the car.

Q. Later he said you owed him \$400? A. Yes.

Q. Did he tell you where he got the rest of the money? A. No.

Q. Now, this purported affidavit notarized by John B. Gale, I'll ask you if that's your signature. A. Yes.

Q. Date 5 November 1963? A. Yes, it is.

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Q. Was that affidavit filled out in full at the time you signed it? A. I don't recall.

Q. It could have been? A. It could have been, and it couldn't have been. Some of it is smaller.

Q. Some of the smaller lines were empty? A. Some of the smaller lines were empty, but I don't recall which ones.

Q. Did Mr. Gale swear you, administer an oath? A. Definitely not.

Q. What did he do? A. He asked me if I got the \$2,500, and I told him yes, and I signed the cashier's check, the piece of paper, and that was it.

Q. And gave the cashier's check to him? A. Yes.

THE COURT: You lay emphasis on whether the signer was sworn. Do you attach some significance to that?

MR. DUNCAN: Yes, your Honor, yes.

THE COURT: Well, for my information, what do you claim about that?

MR. DUNCAN: We maintain these are not affidavits. For the United States Government to certify to the bank in Salt Lake that they were, when as we will later in our

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affidavit show they were on notice of all these defects, was a violation of their statutory duty.

THE COURT: I see.

Q. (By Mr. Duncan) Did you ever see your first stock certificate--or, either stock certificate? A. No.

Q. Did you ever read the warnings or lettering thereon?
A. No, I did not.

Q. All right. Now, when did you next sell stock? A.
In the first part of '64.

THE COURT: Please keep your voice up.

A. In the first part of '64.

Q. (By Mr. Duncan) Who did you sell that to? A.
Wally Davis.

Q. He was a car dealer in Vernal? A. Yes, he was.

Q. How much did you get for that? A. I received an
automobile and \$700.

Q. What happened to your first one? A. I had an
accident with it.

Q. When was that? A. In December.

Q. Did anything result from that? A. Yes. I served
two months in the county jail.

Q. Who put you there? That is, who sentenced you?

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MR. BERTOCH: Object to that as irrelevant.

THE COURT: I see no relevancy to that.

Q. (By Mr. Duncan) The second part of the affidavit,
February 21, '64. Is that your signature? In fact, there are
two of them. A. Yes.

Q. Was that filled in at the time you signed it? A.
Yes, it was.

Q. Were you sworn at that time by Mr. Haslem? A. No.

MR. DUNCAN: I think that's all.

CROSS-EXAMINATION BY MR. KLEMM

Q. Mr. Reed, what schools have you attended during
your life? A. I attended elementary school, Altonah Elementary
School, Whiterocks Elementary School, Union High School--

Q. You graduated from Union High School, didn't you?
A. No, I did not. I left my junior year and went to junior
college in Carbon County.

Q. How long did you attend the junior college in Car-
bon County? A. Approximately two semesters.

Q. What did you study while you were there? A. Auto
mechanics and body and fender.

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Q. During your schooling did you learn how to read?
A. Yes, I did.

Q. As a matter of fact, you can read very well at the present time, can't you? A. That's true.

Q. Do you have any newspapers in your home? A. No.

Q. Magazines? A. Yes.

Q. And can you read those magazines? A. Yes, I can.

Q. Can you tell us the date of your first sale of those 5 shares to Mr. Clyde Murray? A. No, I can't. It was right around the latter part of November.

Q. Was that in 1963? A. Yes, it was.

Q. In any case, it was all completed before February of 1964, wasn't it? A. Yes, it was.

Q. You had your car? You had signed all the documents? Isn't that correct? A. Yes, I did.

Q. Did you think that was sometime in November of '63?

A. Yes. I'm quite sure it was. I had an accident in

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December 5 of 1963.

Q. Now, Mr. Reed, you sold your second 5 shares to Mr. Wallace Davis, didn't you? A. Yes, I did.

Q. How much did you receive for those shares? A. I received an automobile and \$700.

Q. Well, didn't you make some agreement on the amount of money that you were going to get for those shares? A. Yes, I did.

Q. Isn't it a fact that you agreed to sell those shares for \$2,500? A. Yes, I did.

Q. And this was also the price that you posted them for at the Bureau of Indian Affairs, wasn't it? A. Yes, it is.

Q. So you got the amount that you posted them for, didn't you? A. Yes, I guess.

Q. And you're satisfied with that sale, aren't you? A. Yes. You might say that.

Q. You don't have any complaint against Mr. Davis, do you? A. No. I didn't, but I do now.

Q. Well, now, how much was your agreed price of your sale to Mr. Clyde Murray?

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A. \$2,500.

Q. That was also the posted price, wasn't it? A. Yes, it was.

Q. So you received that amount of money, or at least the equivalent thereof, for your stock, didn't you? A. Yes, I

guess I did. Yes, I did.

Q. Now, it's true, isn't it, Mr. Reed, that you reached 21 years of age prior to the time that you sold any of the stock? A. Yes, it is.

Q. What's the date of your birthday again? A. It's July 21 of 1940.

MR. KLEMM: That's all I have, your Honor.

CROSS-EXAMINATION BY MR. PAULSON

Q. Had you bought and sold automobiles before this car that you bought from Clyde Murray? A. No.

Q. This was your first car? A. It was my first car, but the rest of them I paid for by myself.

Q. How many cars had you had before this one? A. Two.

MR. PAULSON: That's all.

CROSS-EXAMINATION BY MR. BERTOCH

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Q. Mr. Reed, do you recall when we took your deposition and asked you a few questions back in June of 1966, over near the Federal Building? A. Yes.

Q. Do you recall that? I'm going to read you some questions and answers and ask you if these questions were asked of you. Now, this was a question by me: "Question: Mr. Reed, as far as you know, do you have any quarrel with the First Security Bank arising out of the sale of your stock to Mr. Murray?"

"Answer: No, I guess I have to answer that no." Were you asked that question, and did you give that answer at that time? A. Yes, I did.

Q. "Question: All right. As far as you know do you have any quarrel with John B. Gale as a result of the sale of your stock to Mr. Murray? "Answer: I have to say no to that, give you a negative answer, because at the time that he notarized that, we did have the check for four hundred and some odd dollars right there. So I don't have any--I'd just like to know where my money went, and I'd like to have it." Were you asked that question, and did you give

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that answer at that time? A. Yes. I believe it was something to that effect.

Q. All right. "Question: Of course, you have no quarrel with Verl Haslem, I guess, arising out of the sale of this stock? "Answer: I don't believe I made any such--any transac-

tion with him." Were you asked that question and did you give that answer? A. I believe so.

Q. Would those answers to those questions be substantially the same now? A. Yes.

Q. Is your mother Anita Reyos? A. No.

Q. Who is your mother? A. Hazelda Hendricks.

Q. Hazelda Hendricks? A. Yes.

Q. And she's a plaintiff in this action? A. Yes, she is.

Q. It was she who suggested to you that you become a plaintiff in this lawsuit, is that correct? A. No.

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Q. She did not suggest it to you? A. No, she didn't.

Q. Did you know that prior to this deposition hearing there, when we took your deposition, that you were suing First Security Bank? A. Yes. I've heard rumors about it. Mostly hearsay.

Q. I see. Did you know at that time you were suing John Gale and Verl Haslem? A. Yes. Being employees of the First Security Bank, I would assume.

Q. You what? A. Yes.

Q. You assumed that you were suing all the employees of the First Security Bank? A. Representative of First Security Bank, yes.

MR. BERTOCH: All right. That's all.

REDIRECT EXAMINATION BY MR. DUNCAN

Q. Stewart, when you appeared before Verl Haslem on February 21, 1964, did Mr. Haslem attempt to dissuade you from selling your stock? A. No.

Q. Did he tell you you weren't getting enough for it? A. No.

Q. Did he tell you what "unadjudicated and unliquidated

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claims against the United States Government" amounted to?

MR. KLEMM: I object to that.

MR. BERTOCH: I object to that.

THE COURT: The objection is overruled.

A. No.

Q. (By Mr. Duncan) Did he tell you weren't getting enough money?

THE COURT: That's repetitious.

Q. (By Mr. Duncan) Did you give the same answer to your conversation at the time you appeared before John Gale on the 5th of November 1963? A. Yes.

MR. BERTOCH: For the record, I object and ask that the answer be stricken. Just because John Boyden wrote the bank some letter doesn't mean the bank is obligated or anybody else is obligated.

THE COURT: That's right. But that fact doesn't prevent inquiry on cross-examination. The objection is overruled.

* * * * *

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JOHN B. GALE called as a witness on behalf of the plaintiffs, having been heretofore duly sworn, testified further as follows:

* * * * *

REDIRECT EXAMINATION (continued) BY MR. DUNCAN

Q. Mr. Gale, you were sworn and testified yesterday, and you understand you're still under oath? A. Yes, sir.

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* * * * *

Q. (By Mr. Duncan) Mr. Gale, you told us in your deposition that one of the things you send in your bank was the monthly reports that the Roosevelt office sent to the Salt Lake office. Do you recall that testimony? A. Yes.

Q. And what are those reports? What do they show? A. The reports that we send--we send some reports daily, some we send monthly, and some we send quarterly. They show our earnings; the loans that we have outstanding, as far as delinquency. We list some names, any large loans. Generally speaking, we have to send in our totals so that they balance them and carry them as a total for the First Security system.

Q. Do these reports also show miscellaneous income, such as the money you received from notarizing various documents? A. Yes, it does.

Q. Does it say the source? A. No. It just says, "Notary Fees."

Q. And when you have delinquent notes and so on, do you list them by name?

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A. Some of them.

Q. So these reports were sometimes daily, but always monthly? A. Always daily.

Q. Always daily. Now, sir-- A. Pardon me. I'd better clarify that. Our delinquents were not daily. Now, I make a report once a month on delinquent Time-Way loans, and they have the names.

Q. Now, sir, I'm going to read you--and I'm referring to page 46--

MR. BERTOCH: Of Mr. Gale's deposition?

MR. DUNCAN: Of Mr. Gale's deposition, yes.

Q. (By Mr. Duncan) We had questioned you, sir, before this about these Arizona transactions, and that's the context of this question. "Answer: Now, I don't recall whether they called or whether they wrote." You were referring to the people in Arizona. "Question: You mean from Arizona?" And this is your testimony. "Answer: From Arizona. This is the Phelps. And wanted to purchase some stock. They had been referred by someone that there was some stock up there for sale and wanted to know how they would go about purchasing it to protect themselves, and to check with the bank.

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And assuming First Security Bank in Roosevelt was tied close enough with our transfer department, that we could protect them as far as acting as transfer agent. So they would send their check to the bank. Then the stock would be endorsed over and put into their name on the bank and sent in."

MR. BERTOCH: On the back?

MR. DUNCAN: "On the back." Correct, Counsel.

Q. (By Mr. Duncan) "On the back and sent in. And when this was done and it was verified that the stock was free to be transferred, then the check would be released and the stock sent in to transfer into their name. "Question: That's

how you did with several of these? "Answer: Yes. That's how it was done with 90 percent of the people that purchases stock." Was that your testimony, and is it your testimony today? A. Yes.

Q. Now, the first transaction that you had anything to do with Richard Murray on was involving Louis Ballard; isn't that correct? A. I don't recall having had a transaction with Mr. Murray and Mr. Ballard.

Q. In any event, you visited Mr. Louis Ballard while he

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was in the state penitentiary, did you not? A. Yes, I did.

Q. And you asked him about buying stock while he was incarcerated? A. Yes.

Q. And you advanced him \$100? A. Yes.

Q. And you later--or was it before this?--you participated in the purchase of his stock with Mr. Murray? A. I didn't participate.

Q. All right, sir. Now, did you participate at all with Mr. Murray in the purchase of the stock of Thomas Chapoose? A. Not to my recollection.

Q. Charles T. Hendricks? A. No.

Q. Ezelda Hendricks? A. No.

Q. Now, if I represent to you that documents relating to each of these people are in the files, would it be your testimony and is it your testimony that if you said they appeared before you, that in fact they did? A. Yes.

Q. And did you guarantee any of their signatures without their appearing before you? A. No.

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Q. This would also apply, I take it, to Joan Caudell Cleward? A. Yes.

Q. Now, I'm referring to page 112 of your deposition, Mr. Bertoch. Prior to the question I'm going to read, we had been discussing your conversations with Martin Zollar. Will you tell us who Martin Zollar was? A. He was the superintendent at the present time--at that time--at the agency.

Q. That's the Uintah and Ouray Agency at Fort Duchesne? A. Yes.

Q. And I'm now quoting from line 13 of page 112.

"Answer: Well, now, time, I couldn't say as far as any specific date. But prior to it being released, I had talked with him--" And you were referring to Zollar, I believe. "--in relation to the proper procedure as far as making our transfers at the bank and sending the documents back to Fort Duchesne to be sent to the trust department. "Question: What occasioned

your talking to him? Did someone in the Salt Lake ask you to do that? "Answer: I don't recall. "Question: But you talked to him about what documents their office would require?"

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"Answer: Yes, and if it was all right if we made a mimeograph of the form. "Question: Yes. I was going to ask you that. In fact, is this a form prepared by the bank, if you know?" And you recall at that time it was, I think, Exhibit 72, but it was the mimeographed form. And you identified it. Do you remember that? A. I remembered it.

Q. "Answer: This is run off on our stencil. "Question: Who prepared that, do you know? "Answer: No, I don't. "Question: You didn't? "Answer: I did not. "Question: Was it prepared in Salt Lake? "Answer: No. "Question: But did you discuss that form with Mr. Zollar? "Answer: I believed he advised us as to what needed to be in the affidavit?" Was that and is that your testimony? A. Yes.

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Q. (By Mr. Duncan) I have one more question. Now, the letters in the 64 series and elsewhere have "U. B." on them, they are all Utahna Berry. They were typed on the bank's letterhead during bank hours and mailed from the bank's mailing procedure? A. Yes, that's correct.

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Q. And on a great many of them, perhaps most, you identified yourself as assistant manager? A. Yes.

Q. Did you ever report the income you were making on the sale of this stock or commissions to any other bank officer? A. Yes.

Q. And who was that? A. The manager and Mr. Murphy.

Q. And when did you do that? A. I think it was after the first transaction.

Q. The first purchase that you were involved in? A. Yes.

Q. And told him, did you not, that you were making a commission in handling some transactions involving the UDC stock? A. Yes.

Q. Did you tell him Mrs. Berry was typing your letters in connection with these stock dealings of yours? A. I don't recall whether I was--had or not.

Q. Then I refer you to page 135 of the deposition. "Question: Did you tell him Mrs. Berry was typing your letter?

"Answer: Yes. "Question: He didn't object?

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"Answer: No." That was and is now your testimony? A. Yes.

MR. DUNCAN: That's all.

RE-CROSS-EXAMINATION BY MR. BERTOCH

Q. Mr. Gale, this affidavit, Exhibit 72, which was referred to by Mr. Duncan, what was the--and that was prepared by the bank--what was the purpose of that, do you know? A. The purpose of this was so that we could ask the Indian if he received the amount of money which he had advertised for and have him sign this so that it could be sent back to Fort Duchesne so that they could be notified that he had received the money and the amount that he had advertised for.

Q. And is it true that the bank required that the agency notify them that this affidavit had been executed before they would make the transfer? Is that correct? A. This is correct.

Q. Was this designed to be a protection for the bank in connection with the transfer? A. This was designed to make sure that the Indian received his money.

Q. So it was a protection for both the mixed-blood and the

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bank; is that correct? A. Yes. So that we would have an affidavit that he had received his money and we would be free to transfer his stock.

MR. BERTOCH: That's all I have.

MR. DUNCAN: That's all.

RE-CROSS-EXAMINATION BY MR. KLEMM

Q. Mr. Gale, when you talked to Mr. Zollar, you called him to find out what the agency would require in this regard; isn't that correct? A. Yes, sir.

Q. And he said, "We want an affidavit to make sure that they get the money"; isn't that what he said? A. Yes.

Q. And that was most of your conversation, wasn't it? A. Yes, it was.

MR. KLEMM: That's all.

GALE RICHARD MURRAY
DIRECT EXAMINATION BY MR. DUNCAN

- Q. You're one of the defendants in this action? A. Yes, I am.
Q. Where do you live, Mr. Murray? A. Roosevelt.
Q. You're also known commonly among your associates as Nick?
A. Yes.
Q. Now, before we called you as a witness I handed you a copy of the exhibit to your deposition whereon you scheduled the sales of UDC stock and the purchases in which you had an interest. Is that correct? A. Yes.

* * *

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Q. I show you, Mr. Murray, what's tentatively marked for identification as Exhibit 105, and I ask you if this schedule was prepared by you?
A. I got it after--after it was prepared. I had it prepared.

Q. And is this the exhibit that you identified in your deposition?
A. Yes.

Q. And is it true and correct as far as you now recollect? A. Yes.

Q. I asked you to indicate on there, sales in which there was a car involved. You have done that by the letter C or the word "car." A. Yes.

Q. Right. And I asked you to list on there transactions in which you split a profit or commission with Mr. Gale. A. That's right.

Q. And you've done that with a G? A. Yes.

* * *

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Q. Now, Mr. Murray, you split profit with Mr. Gale on about two thirds of your car dealings, didn't you? A. Not the car dealings, no.

Q. I'm referring to your deposition, page 36. I'm going to start on page 35 and ask you if this is your testimony on 20 January 1966.

Q. Question: Now, from this and the records we're looking at, how many transactions would you say that you had a part in, did Gale have a part in, on a commission basis or as a purchaser? Answer: That I had a part in? Question: With Gale. Answer: With Gale. Oh, I'd say approximately two thirds of the stock I handled."

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Was that and is that now your testimony? A. Yes. Stock. You asked me about the car deal there.

Q. So it is your testimony, so I'm clear on it, that approximately two-thirds of the stock-- A. Stock.

Q. And in every instance when you purchased stock, the assignment, the stock power, if there was one, and the affidavit was always notarized or guaranteed by John B. Gale? A. That's true.

Q. And you worked with Gale on a deal by deal basis, didn't you? A. That's true.

Q. And that you were to split 50/50 the difference or the profit made? A. True.

Q. Now, you paid for the various shares of Ute Distribution Corporation stock you purchased, some cash, but you also gave cars, gas, oil, tires, parts, and repairs? A. True.

Q. Isn't it a fact that in most instances on these transactions when you were dealing in UDC stock, the name of the purchaser was not filled in on either the affidavit or the stock power, so that the mixed-blood actually didn't know who was the buyer that would finally appear?

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A. True.

Q. In fact, this was the case on your first transaction involving Lewis Ballard? A. True.

Q. And on the Lewis Ballard transaction, Mr. Gale participated with you? A. That's true.

Q. Now, were the cars that you traded to the mixed-bloods fairly priced, or did you value them and put a price on them higher than they were really worth? A. Probably higher than they were worth.

Q. Now, from time to time you found yourself with UDC stock and no buyers, is that correct? A. True.

Q. Is it a fact that during 1963 and 1964 in the Uintah Basin there were considerably more shares of stock for sale than there were purchasers?

A. That's a fact.

Q. Now, from time to time you carried large sums of money in your wallet, up to \$6,500, for purposes, in part at least, of purchasing UDC stock, and all of this money was borrowed from First Security Bank? A. True.

Q. And at least on one occasion you borrowed money from First Security Bank and pledged as collateral UDC stock?

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A. That's true.

Q. Now, you split your first deal with Ballard with Mr. Gale. Can you tell us how much you made on that one and how much Mr. Gale made?

A. I don't recall.

Q. But that was in addition to getting a fee from notarizing the papers? A. Yes.

Q. Now, will you tell us about your first contact with one Elmo Mathews? A. As I recall, he called me by the--either he or a friend of mine that knew Elmo called me on the telephone from Arizona. I think that would be the first contact.

Q. Can you tell us about when that was? Does May 1963 refresh your memory? A. It could have been around that time.

Q. And was it this telephone call that got you and Mr. Gale working together? A. Well, I'd have some--I think that had the--the way it started, the bearing of it, yes.

Q. Now, is it a fair statement that Mathews called you, and you recommended to Gale--recommended to him that he use Mr. Gale and First Security Bank to work these transactions? A. I think that came from my friend John Benson that

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recommended using First Security Bank.

Q. Did you discuss this with Mr. Gale? A. I could have.

Q. That is, that money would be coming in and that he would hold it and you'd find this buyer--the stock seller? A. I don't recall the conversation.

Q. But you do recall that you very early talked to him in May or June of '64 about splitting 50/50? A. Yes.

Q. That wasn't in writing, but that was your understanding? A. Yes.

Q. And that's what you did? A. Yes.

Q. And he sold his clients--I believe that's your word--and he sold Mathews' clients, and your function was to find the stock, supply the stock to them? A. No, how is that, again?

Q. Mr. Gale was to sell his clients--perhaps I can refresh your memory. Mr. Gale was to sell his clients and Mr. Mathews' clients, and your job was to find the stock when they needed it? A. I don't think we had any agreement to that effect. Actually, Mr. Mathews was a connection that I had. He was working through John.

Q. So you--

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A. So I'd find the stock to fill his orders.

Q. Yes. All right. A. Uh huh.

Q. Is it your testimony that Mr. Gale told you that Owens and Mathews were frequently contacting buyers in Arizona and sending money in to Gale frequently? A. Yes.

Q. From time to time you'd see Mr. Gale, and he'd tell you, "I've received so much money, and we want so many shares," and how much the buyer was willing to pay? A. Well, we had a set price with Mathews and Owens as to how much they would pay us.

Q. How much was that? A. \$530 per share.

Q. Now, you had a different arrangement on other moneys that came in to Gale, such as Phelps. How much was Phelps paying Gale? A. We got \$530 per share straight through.

Q. For Phelps? For Carpenter?

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A. For any of them that Mathews and Owens sent in, we received \$530 per share.

Q. Did you participate in any purchases involving one Shaw?

A. Shaw?

Q. Do you recall that? A. I can't recall.

Q. Mills Tooke? A. No.

Q. Gyllstrom? A. It's a possibility.

Q. So is it a fair statement that Mr. Gale told you the money was here before you went out and actually purchased the stock from time to time? A. We would start buying our stock sometimes before it was--I would start buying it sometimes before the sale was advertised--the advertisement would be completely up. So I'd have to have some of the stock lined out before the money would come in.

Q. * And is it a fair statement that you and John contemplated making loans and did make loans to the mixed-bloods because you felt they would then sell you the stock when the time of posting was up? A. I did. I can't say about John.

Q. Now, several times you had occasion to buy stock, and

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you didn't have enough money to do it. And then you went to Mr. Gale, who took money out of one of these funds he had, or checks he had, and you took the money back to the mixed-bloods; is that true? A. That would be when I bought the purchased the stock.

Q. Yes. You did it in at least two instances? A. Yes.

Q. Can you recall those? A. Oh, I can recall getting the money. I can't recall the people that I purchased from.

Q. Do you have any reason to believe that Mr. John B. Gale or Mr. Verl Haslem knew that you were trading cars and other non-cash items for UDC stock?

* * *

A. Well, I have no way to follow, no. It was a known

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fact around the town that there was some automobiles traded for stock.

THE COURT: The question is--I think it would be proper to say, "Did you have any conversation at all with Gale, or was there any conversation in Gale's presence at any time you recall concerning your trading cars for stock." A. - There could have been.

MR. DUNCAN: Let's talk about --

MR. BERTOCH: I object to that and as it be stricken, your Honor.

THE COURT: Denied. Do you remember any time, place, or persons present?

THE WITNESS: Well, there was a Dwight Copperfield that had traded for a Cadillac from me there. There was a balance owed on it that John financed through the bank, the balance, I think probably he could have known that.

THE COURT: Do you know whether he did or not?

THE WITNESS: I don't know.

THE COURT: I see.

Q. (By Mr. Duncan) I'm going to ask you if this is your testimony, page 135--start on 134: "Question: Now, do you know for sure whether or not Gale knew that you were giving automobiles as part of the compensation in some of these transactions? "Answer: Yes, I know for sure.

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"Question: Do you know that he did know? "Answer: Yes, "Question: Can you tell me of any particular transaction in which you knew that he knew? "Answer: Yes. "Question: Which one? "Answer: Dwight Copperfield." And I'm skipping down here to the last line. "Question: Now, did you tell him about that? Is that how he knew? "Answer: No. He financed--there was a--Dwight received some money, and then he had some held out of the--I didn't pay him for the down payment on the car. And John fixed the financing up on it for him--the balance that was owed on it." Skipping down here to line 13. "Answer: Well, it was--the whole deal was right in front of him when he financed it." Is that your testimony now? A. Well, yes. That's just what I got through saying.

Q. It's also true, is it not, that the First Security Bank held the title to a number of cars that you transferred to the mixed-bloods? A. Well, they held title on several cars that I would borrow money on when I purchased them.

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Q. That's First Security Bank in Roosevelt-- A. Yes.

Q. -- that held these titles? Were you ever present when a mixed-blood talked about the financing of a car? A. Yes, I believe I was.

Q. You recall Zelda Reed's case, for example? A. Zelda Reed.

Q. All right. And at that time both Mr. Gale and Mr. Haslem

were there when you were arranging the trade and financing through the bank of the stock of the car to Zelda Reed for the stock? A. I wasn't trading her stock.

Q. No. You were trading a car for her stock? A. No. She had a car she was about to lose.

Q. I'm going to ask you about certain specific people and ask you if you know whether or not these instruments were in fact signed in front of John B. Gale. Thomas Chapoose? A. Yes.

Q. What do you know? A. I'm sure they were. There was only one occasion that I ever went before John to have a notary done.

Q. All right. Now, how about signature guarantee? A. That's what I was referring to.

Q. Well, is it your testimony then that the documents signed by Mr. Chapoose were signed in front of Mr. Gale?

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A. Yes, sir.

Q. The stock transfer arrangement and the affidavit? A. Yes.

Q. Charles T. Hendricks, Jr.? A. Yes, sir.

Q. Joan Caudell Cloward? A. No, sir.

Q. In fact, in that one you had her sign it here and took it out to Gale in the Basin, and he guaranteed it? A. Yes.

Q. Stacy Reed, Jr. A. Well, I didn't buy his stock.

Q. No. But isn't it your testimony and wasn't it--isn't it your testimony today that you saw Mr. Stacy Reed, Jr., sign an affidavit and a stock power in blank? A. Yes sir.

Q. You don't know who notarized it? A. No, sir.

Q. Now, it's a fact, is it not, that when you and Mr. Gale split your profits, he would always go back somewhere in the bank and bring out currency and pay you in cash? A. Yes, sir.

Q. Now, on various occasions you took to the agency in Fort Duchesne affidavits, stock powers, and so on for mixed-bloods from whom you were purchasing stock?

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A. Yes.

Q. Isn't that true? A. Yes.

Q. And you delivered them to whom? A. Mrs. Logan generally.

Q. That's Mrs. Adelyn H. Logan? A. Yes.

Q. Did you know what her position was with the agency? A. No,

I don't.

Q. Did you know her? A. Just when I seen her.

Q. As a matter of fact, they had been a steady customer at your garage and station? A. Her husband had been.

Q. Page 47 of your deposition: "Question: Now, you took this in, and this was the first time you met Mrs. Logan? "Answer: Oh, I've known

her for--I knew her when I seen her for a long while. "Question: Where have you met her? "Answer: Oh, Mr. Logan was a steady customer there at my Phillips station, and I had seen her on different occasions with him when he had stopped for gasoline." That's your testimony? A. That's true.

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Q. In any event, you recognized each other when you went in?
A. Yes.

Q. Did she ask you anything at all about the documents you brought? A. I can't recall.

Q. Now, you brought in documents on several other occasions to her, did you not? A. Two other occasions.

Q. Did she ever ask you about the documents or what they purported to be or what was in them? A. I can't recall our conversation.

Q. Now, at some point you purchased stock of one Robert Reed, and you found out you couldn't get it transferred. Do you recall that transaction? A. Yes, sir.

Q. And what did you do about it? Did you have Mr. Gale call Salt Lake City for you? A. Yes, sir.

Q. And then you went out and talked to Mrs. Hendricks because you were only \$250 apart? A. Yes, sir.

Q. You already had the stock? A. No.

Q. Or you already had the instruments?

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A. The instruments were held up at Fort Duchesne, because Mrs. Hendricks went in there and asked for them to be held up.

Q. Mrs. Logan held up the transfer because Mrs. Hendricks asked her to? A. I'm not sure it was Mrs. Logan, but they were held up at Fort Duchesne.

Q. And you went out after you obtained a letter from Mrs. Hendricks, gave it to Mrs. Logan? A. I can't recall.

Q. Did Verl Haslem know that you and Gale were working together?
A. Not that I know of. May have done.

Q. Isn't it a fact that you worked together with Mr. Gale on a number of occasions and Mr. Haslem overhear your conversations? A. Very possible.

Q. I'm referring now to page 110 of your deposition. I questioned you about Haslem. "Answer: Oh, he knew I was dealing in stock, and John and I were having a lot of discussions and together quite a bit. "Question: You met he saw you and John talking? "Answer: In the bank, yes. "Question: And he heard you mention the Ute stock at

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different-- "Answer: Yes. At several different times." That was and is your testimony today? A. Well, I didn't mean it the way it sounds there. He had heard me mention the stock, but that doesn't mean I was with John when I men-

tioned it.

Q. I show you what has been marked for identification as Exhibit 68C and ask if this wasn't supplied to us by you at the time of the taking of your deposition, and further if you didn't receive it through the mails on or about the date it bears. A. Yes.

Q. I'll ask you to first of all identify who is the "Nick" it's addressed to. A. That's me.

Q. And who is "Elmq"? A. That's a fellow in Arizona.

Q. Elmo Morgan? A. Mathews.

Q. Will you read that letter, please? A. "Dear Nick: Thanks for sending down the proxies.

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However, most of the people I sold are out of town right now. Inclosed herewith is Mrs. Gyllstrom's proxy, but Jasper in Wickenburg, Frost in Mesa, Carpenter in Phoenix, and Woods in Sedona are not home. Make sure John Gale has Mrs. Gyllstrom's home address. It is 1943 West Adams, Phoenix, Arizona.

"John tells me Phelps in Show Low sent in the balance to make the total sent in \$13,000. Be sure and tell John to deposit my amount to my account there as quickly as possible. I could always use it. Ha ha.

"In the letter John sent to some of our prospects, he indicated that in two or three months they would probably pick this stuff up at around \$600 a share. If that be the case, you certainly are not buying it for \$500. So I think we should have an agreement as to how much I can expect on stock sold at various prices. As you know, there is no incentive to sell it to John for \$600, and then he hold out \$530 per share. In other words, as long as it moves here for at least \$650 per share, I'll go along with the \$530; but if you let it go there for around \$600 to my clients, then you'd have to come up on the other end to at least guarantee me around \$125 to \$150 per share. Agreed?

"Hope all is going well there for you. Keep me

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posted, and I'll get some more of this sold, if we can only get some of these people to act. As soon as Hal gets back from Utah, we'll call you to get, something settled for money we have there in the bank to pick up the stock for Hutchinsons. We've talked to you about this before, but I'm afraid they're going to ask for their money back, and then we'll all be the losers.

"So long, Elmo. Please note that the above address is my address. The last address you used was Hal's." No further questions.

CROSS EXAMINATION BY MR. BERTOCH

Q. Mr. Murray, these transactions that you've listed on what

is now Exhibit 105, which is a list of the names of people from whom you bought and the date of your purchase, and then the person to whom you sold, from what source did you make up that list? Just from your memory? A. No. I went to the corporation and got the list. There's some of those on there I didn't buy them.

Q. Some you didn't buy from? A. Yes. I got the ones that I did on there.

Q. Do you know whether this list is accurate or not? A. Yes, it's accurate.

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Q. Isn't it true, Mr. Murray, that in connection with these transactions on which you worked with John Gale that the stock was sold to, was it Mathews--at least, many of the transactions--for \$530 a share? Is that right? A. Yes, sir.

Q. Were there any that you sold the Mathews that you sold for more than \$530 a share in which John worked with you? A. No, sir.

Q. That was the maximum price in connection with all of them; is that correct? A. Yes.

Q. Now, if it may help refresh your recollection, isn't it true that on all of these transactions that Mathews had money, he had a deposit in the bank; is that correct? A. Well, Mathews had his client send money to the bank.

Q. So there was a deposit in the bank which Mathews controlled is that correct, or from which the money was taken by which Mathews purchased the stock; is that right? A. Yes, sir.

Q. All right. And isn't it true that in all these instances when stock was sold to Mathews that John Gale withdrew the money from the account the \$530, kept \$30 himself, and gave you \$500? Isn't that correct? A. No, sir. It started that way at the beginning, but we ended up splitting our commissions right straight down

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the center.

Q. Do you recall of any particular case where you split the commissions? A. Well, I can't pinpoint the case.

Q. No. Do you have any records by which you can pinpoint any case where John got more than a \$30 commission? A. No, sir.

Q. Alright. And so then John got this commission or this \$30 from Mathews' account; that's correct, isn't it? A. Yes, sir.

Q. Rather than from you? A. Yes, sir.

Q. Now, in these transactions, you were the one that went out and bought the stock from the mixed-bloods? That's true, isn't it? A. Yes, sir.

Q. And is it true that you do not know of any instance in which

John Gale knew you were trading automobiles or merchandise for the stock?
Is that correct? A. I don't think that would be correct.

Q. All right. Tell me one instance in which you know that he knew that you were trading. A. Dwight Copperfield, I'm certain, knew that I was taking stock on that automobile.

Q. Well; now, a moment ago you said you weren't certain,

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but that you assumed that, but you weren't certain? Isn't that in substance what you said a few minutes ago? A. That could be.

Q. You didn't know that John Gale did know? A. There is no way to know. No, sir, I don't.

Q. All right. Now, this situation, for example, with Ezelda Hendricks where a car was being financed with her was, an instance in where you weren't trading stock? That's true, isn't it? A. That's true.

Q. And that was true in several cases, wasn't it, where perhaps mixed-bloods were financing cars and there was no trade for stock involved? Isn't that true? A. Yes.

Q. And just because the bank may be financing a mixed-blood who is purchasing a car doesn't mean that John Gale would know that that financing involved the trade of stock, does it? A. No, sir.

Q. Do you recall about how many transactions there were in which you and John worked together on some basis? A. Not to the number, no.

Q. Do you recall saying in your deposition that it was-- A. Yes.

Q. --between twenty and thirty? Do you think that's

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possibly correct? A. Possibly.

Q. It may have been less than that? A. Possibly.

Q. It may have been more? A. Possibly.

Q. But you don't have any records of your own by which you can tell exactly from whom you bought or to whom you sold? Is that right? A. None of my own, no, sir.

Q. And you don't have any records of your own from which you can determine how much you paid for stock that you bought from mixed-bloods; is that true? A. That's true.

Q. All you know is from your recollection; is that right? A. Yes, sir.

Q. Do you have any records from which it can be ascertained how much profits you made on a particular share of stock bought from a particular mixed-blood? A. No, sir.

Q. Didn't you keep any canceled checks or any records of that type? A. Yes, sir.

Q. Where are they now? A. They are destroyed in the fire, except the checks

weren't destroyed. I do have some--or, I did have some canceled checks.

Q. Do you still have them, do you know? A. No, sir.

Q. Do you know where they are? A. No, sir.

Q. Have you lost them? Did you bring them to a deposition?

A. Yes, sir, I brought them to a deposition, and they disappeared.

Q. You don't know what happened to them? A. I don't know what happened to them.

Q. All right. Is there any case in which--I think you've testified there was a case in which you used UDC stock as collateral in connection with the financing a loan you were making; is that correct? A. It was left in my file at the bank.

Q. Now, at the same time in connection with that, you put up additional collateral? A. I had additional collateral in the bank at that time, yes.

Q. Yes. In other words, you've made loans from the bank over a period of years? A. Yes, sir.

Q. Is that right? And you had collateral at all times in there in addition to any UDC stock that you may have put

up as collateral? A. Yes, sir.

Q. So there was no occasion on which you made a loan when the sole collateral was UDC stock? A. No, sir.

MR. BERTOCH: That's all I have, your Honor. Thank you.

CROSS EXAMINATION BY MR. PAULSON

Q. Mr. Murray, did anybody ever tell you that the consideration you paid for this stock had to be in cash? A. No, sir.

Q. Did anybody ever tell you that it could not be in cars or other merchandise? A. No, sir.

Q. Did any of the people with whom you dealt ever object to receiving part of the consideration in the form of a car or other merchandise? A. No, sir.

Q. Is it not true that in most cases the Indians came to you and sought you out to buy the stock? A. Yes, sir.

Q. Tell us about this fire that you say consumed your records. What's that all about? A. I had a Phillips station in Roosevelt, and I had sold

it before it burnt down, I still had my box of records in it. And it went up in the fire, a gas truck blew up in it.

Q. And you say you did have some canceled checks. I take it they were not in the service station at the time of the fire? A. They were not in the service station at the time of the fire.

Q. And you brought those to the deposition at the time it was taken? A. Yes, sir.

Q. And to the best of your knowledge, who had those canceled checks at the last time you knew of it at the time that deposition was taken?

A. Mr. Duncan.

Q. Mr. Ivie was your attorney at that time, is that correct? A. Yes, sir.

Q. Now, you have attempted through your present counsel to see if those checks are in the possession of Mr. Ivie? A. Yes, sir.

Q. And are they? A. No, they're not.

Q. Have you ever had the checks in your possession since the deposition was taken? A. No, sir.

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Q. Do you have an agreement with Mr. John Gale or anyone else to in effect cheat the Indians out of their stock? A. No, sir.

Q. And in each instance was it your impression that you paid a full and honest price for the stock that you bought? A. I didn't pay the advertised price.

Q. But did you pay what the stock was worth? A. Yes.

Q. Did you pay the going price for which it was being sold in the Uintah? A. Yes, sir.

MR. PAULSON: That's all.

CROSS EXAMINATION BY MR. KLEMM

Q. One thing for sure, Mr. Murray, there was a good market for this stock, wasn't there? A. Not always, no.

Q. Well, there was no problem in obtaining the stock, was there? A. No, sir.

Q. As a matter of fact, people were coming to your door almost every day to sell stock, weren't there? A. Yes, sir?

Q. People would come to your door, and they'd say: "I want to buy a car," and you'd say, "How much money have

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you got?" And they'd say, "I don't have any money, but I have stock" Isn't that what happened? A. To that effect, yes, sir.

Q. And they in effect were pushing this stock off on you, weren't they? A. Yes, sir.

Q. And they were trying to sell it almost daily; isn't that correct? A. Yes, sir.

Q. In fact, you had to turn many of them away, didn't you? A.

Yes, sir.

Q. You were aware, weren't you, that other people in town were buying the stock, too? A. Yes, sir.

Q. Druggist were buying the stock, weren't they? A. Yes.

Q. Restaurant owners were buying the stock, weren't they? A. Yes.

Q. People in all walks of life in that area were buying that stock weren't they? A. Yes.

Q. People in Salt Lake City were buying that stock, weren't

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they? A. Well, later on, yes.

Q. And people in Arizona were buying the stock, weren't they? A. Yes.

Q. People in Texas were buying the stock, weren't they, or do you know of any-- A. I have no way of knowing.

Q. People in Michigan were buying the stock, weren't they? A. I have no way of knowing.

Q. You stated earlier that you went to the Indian agency on three occasions? A. Yes, sir.

Q. And on two of those occasions you went there simply to deliver affidavits; is that correct? A. Yes, sir.

Q. That was your sole purpose in going? A. Sole purpose.

Q. And, as a matter of fact, those affidavits involved stock that you had purchased yourself, didn't they? A. On the first occasion it was stock that my father had purchased.

Q. You were in business with your father, weren't you? A. No, sir.

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Q. Well, what was your relationship with your father?

THE COURT: Father and son, I suppose.

Q. Did you have any business dealings with your father? A. I had worked for him in previous years, but I wasn't in business with him at that time.

Q. You were aware that your father was buying stock? A. Yes, sir.

Q. Your father wasn't in on any of these so-called deals that you had with Gale, was he? A. No, sir.

Q. He didn't even know about them, did he? A. I think I told him about it, yes.

Q. But he wasn't in on it? A. No, sir.

Q. He didn't share any of the commissions? A. No, sir.

Q. And Earl Dillman didn't share any of the commissions, did he? A. No, sir.

Q. And Lynn Labrum didn't share any of the commissions, did he?
A. No, sir.
Q. Wally Davis didn't share any of the commissions, did he?

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A. No, sir.
Q. Did you ever tell them about it? A. No, sir.
Q. Did you ever work with them on any of these things? A. No, sir.
Q. The only one that you worked with was Mr. Gale, is that correct? A. Yes, sir. That's correct.
Q. All right. You say that on one occasion you went out to the agency carrying affidavits on stock that your father had purchased; is that correct? A. Yes, sir.
Q. And that was a favor to him, wasn't it? A. Yes, sir.
A. And all you did when you got there was simply deliver the affidavits? A. Yes, sir.
Q. You didn't have any conversation with anybody about them, did you? A. None that I can recall, no, sir.
Q. Now, on the third occasion, or at least on another occasion, there was a dispute about some of the value of some land; isn't that what happened? A. I can't recall.
Q. Didn't you have some problem in some of the stock

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where the Indian agency held the affidavits and did not convey a word to the bank? A. Yes. In five shares of stock of 'Robery Reyos', I bought from Ezelda Hendricks.

Q. In that case, the question that was raised was the value paid for the stock? A. It wasn't Robert Reyos, either. It was Robert Reed.

Q. It was Robert Reed? A. Yes, that I bought from Ezelda Hendricks.

Q. And the question that was raised was the value that was paid for the stock; isn't that correct? A. Yes.

Q. And there was some question about whether or not she had received the amount that she had posted it for; isn't that correct? A. I think that's correct.

Q. And so you went out and cleared this up with Mrs. Hendricks, didn't you? A. Yes, sir.

Q. Then you got some kind of a written statement and took it to the Indian agency; is that correct? A. Yes, sir.

Q. That was the third occasion that you went out there?

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A. Yes, sir.

Q. Now, did you have any lengthy discussions with anybody

about that thing there? A. No, sir.

Q. . You simply delivered it and left it; isn't that correct? A. Yes, that's correct.

* * *

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REDIRECT EXAMINATION BY MR. DUNCAN

Q. Now, Mr. Murray, Mr. Bertoch, I believe, asked you if you recall any specific transactions where you redealt with Gale on these transactions. I'm going to ask you about some names that you mentioned in your deposition. Did you split a profit on the transaction involving five shares with Charles Hendricks? A. I'd have to look on that paper and see who it was sold to.

Q. Well, now, referring to Charles Hendricks, which you identify on page 140 of your deposition, Hollis G. Hollinger, both of which you sold to Frost and Jasper. Do you remember those? A. Frost and Jasper?

Q. You split on those? A. Yes, sir.

Q. And on the Carma Coleen Reed Gardner transaction you made pretty good, didn't you? You made \$350 apiece? A. Yes, sir.

Q. You made \$350, and so did Gale? A. Yes.

Q. You split the Thomas Chapoose transaction, sold to Vannoy?
A. Yes, sir.

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Q. And the Louis Russell Reed sold to Phelps? A. Yes, sir.

Q. And the Robert Reyos commission sold to Vannoy? A. Yes, sir.

Q. There was an automobile involved in each of those? A. I believe there was.

Q. And Frank Burson, five shares to Carpenter? A. Yes, sir.

Q. And two shares Copperfield to Vannoy? A. Yes, sir.

Q. Five shares Louis Ballard to Vannoy? A. Yes, sir.

Q. Five shares to Oran F. Curry, Johnson to Vannoy? A. Yes, sir.

Q. Richard Donald Taylor, ten shares to Vannoy? A. Yes, sir.

Q. Robert G. Reyos, five shares to Vannoy? A. Yes, sir.

Q. Richard Curry, two shares to Vannoy? A. Yes, sir.

Q. Now, is it a fact that you relied a lot on John Gale to counsel and guide you and work with you on the transactions you were working on together? A. Yes. He understood it pretty well.

Q. And you relied on him a lot?

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A. Some.

Q. And you saw Mr. Gale three or four times a week during May and June of 1964? A. Possibly, yes.

Q. Now, recalling your testimony elicited by counsel for the United States about the many people you talked to that were buying the stock in the Basin and in Salt Lake and in Arizona and so on, did you have occasion to talk to a number, a large number of people in the Uintah Basin concerning the purchase and sale of UDC stock? A. Yes. I talked to different people.

Q. Now, I show you what's been marked for identification as Plaintiffs' Exhibit 62 and ask you if you received that or saw that letter. That's a form letter. It might be addressed differently, but the substance of that letter.

MR. KLEMM: What's the number of that exhibit?

MR. DUNCAN: 62.

Q. (By Mr. Duncan) Have you seen that letter before? A. Yes, sir.

Q. You received it, I take it, and others that you talked to received it also? A. I didn't receive one. I've seen different ones that the Indian people brought in to me.

Q. How large a town is Duchesne? A. I imagine around two thousand people. Possibly--

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Q. How large is Roosevelt? A. It would be, I think the population in Roosevelt would be right around three thousand.

Q. How about Fort Duchesne? A. Oh, possibly four or five hundred, maybe, six.

Q. Do you know most of the people in those areas? A. Yes, sir.

Q. Do you think that in 1964 you talked to most of the people in that area that were dealing with UDC stock? A. I talked to the majority of them, possibly.

Q. Do you have an opinion as to whether it was common knowledge that the mixed-blood was accepting cars in trade for his stock?

* * *

Q. Do you have such an opinion? A. That would be my opinion.

Q. That is your opinion? A. That it was common knowledge.

MR. DUNCAN: Thank you.

RE-CROSS EXAMINATION BY MR. BERTOCH

Q. You purchased some stock from Charles Hendricks, is that

right?

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A. Yes, sir.

Q. To whom was that sold? A. I'd have to check the list there to see.

Q. Do you know how much you got for that when you sold it? A. No, sir.

Q. Did you sell it to John Gale? A. I'd have to check back on my list to see. I don't have--

Q. Where is your list? A. It's on the back of a deposition.

* * *

Q. Do you know how much you got for the stock that-- A. That wasn't sold to John Gale, I don't think.

Q. All right. How much did you get for it? A. I don't recall.

Q. Do you know what profit John Gale made, if any, on that stock? A. I don't think John made any on that stock.

Q. You just testified here in response to Mr. Duncan that

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this was an example of where he made a profit on the stock. And you were wrong on that, is that correct? A. I was, if I said Charles Hendricks was one.

Q. Yes. A. Yes, sir.

Q. All right. Now, do you know how much John Gale made, if any, on the transaction involving Chapoose? A. We made a profit on that, but I don't recall how much.

Q. You don't know how much John Gale got? A. No, sir.

Q. Do you know how much profit John Gale made, if any, on any transactions involving Mrs. Vannoy where she bought the stock? A. Let me check here. Vannoy? No, I don't recollect.

Q. All right. You don't know what he made, if anything, in connection with the Vannoy transactions; is that right? A. I know we split the profits, but I don't recall what they were.

Q. You don't know what he made? A. No, sir.

Q. You don't know whether he made a profit or not? A. Oh, yes. I know he made a profit, yes, sir.

Q. How do you know that? A. We split it.

Q. How much did you get?

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A. I don't recall.

Q. And you don't know how much he got? A. There were several transactions that I had other business at that time, and I don't recall the

amount.

Q. You sold these shares that Vannoy got to John Gale for \$500; isn't that correct? A. No. They were different prices.

Q. Are you sure? A. I'm sure.

Q. Have you any record from which you can ascertain how much you sold the stock for that went to Vannoy? A. No, I have no record.

Q. As far as you know, it may have been \$500 a share, is that correct? A. Some of them may have been.

Q. As far as you know, it was sold to Mrs. Vannoy for \$500 a share; isn't that true? A. I don't know just what Mrs. Vannoy paid for her stock.

Q. All right. Now, with respect to the shares sold to Carpenter, do you know how much profit, if any, John Gale made on those? A. No, sir, I don't.

Q. All right. These are the ones that Mr. Duncan just asked you about, and you said that they were instances in which you worked with Gale, but it's true, is it not, that

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you don't know how much he made, if any, with regard to any one of them? Now, that's correct, isn't it? A. Those you asked me about?

Q. Yes. A. Yes, sir.

MR. BERTOCH: That's all.

THE COURT: Is there anything further, gentlemen?

RE CROSS EXAMINATION BY MR. KLEMM

Q. Mr. Murray, do you know of any agreement between the various car dealers in Roosevelt to obtain stock from mixed-bloods? A. No, sir. No agreement, to my knowledge.

Q. As a matter of fact, they were in competition with each other for this stock, weren't they? A. Yes.

MR. KLEMM: That's all.

MR. DUNCAN: No further questions. Thank you, your Honor.

THE COURT: All right. Thank you.

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MELVIN REED called as a witness in his own behalf, being first duly sworn, testified as follows:

THE CLERK: Please state your full name.

THE WITNESS: Melvin Reed.

DIRECT EXAMINATION BY MR. NIELSON

Q. Mr. Reed, where do you live? A. Right now?

Q. Right now. A. State Prison.

Q. What offense were you committed to the Utah State Prison for? A. Forgery.

Q. Is that one time or more than one time? A. Just one conviction.

Q. But you've been back what? Once on probation? A. I've been back in there three times.

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Q. It's all on the same offense? Revocations of your parole; is that right? A. Right.

Q. Mr. Reed, are you a member of the mixed blood group of the Uintah and Ouray Reservation? A. Yes.

Q. Was your name published on the mixed blood roll? A. Yes.

Q. Did you receive ten shares of stock in the Ute Distribution Corporation? A. Well, I was advised that I received that many.

Q. Did you ever see your stock certificate? A. No.

Q. How did you learn that you were the owner of ten shares of stock in the Ute Distribution Corporation? A. I

received a letter, I don't know whether it was from the board members or whether it was from the superintendent.

Q. All right. Mr. Reed, I'll show you a document which is contained in Plaintiffs' Exhibit No. 5-A, which is a copy of a stock certificate bearing No. 380. Is that your mixed blood number? A. Yes.

Q. And it has your name on it, and it's for ten shares of stock. Have you ever seen that stock certificate before?

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A. No.

Q. Have you ever had an opportunity to read the warning that is printed on the stock certificate? A. No.

Q. Have you had an opportunity to read on the reverse side of the certificate the notice of restriction on transfer?

A. No.

Q. The next document in this file, Mr. Reed, is an offer to sell. It's not a very good copy, but it purports to bear your signature. Did you sign that document requesting that your stock be advertised for sale? A. Yes. I believe I did. They sent me two papers like that, and I sent them back. I filled them in.

Q. You were at the Utah State Prison at that time? A. Yes.

Q. All right. Now, subsequent to the time when you signed those papers, Mr. Reed, were you released from the Utah State Prison? A. Yes. March 10 of '64.

Q. After you got out of the State Prison, where did you go? A. I went back to Roosevelt.

Q. All right. When you got to Roosevelt, could you tell me what you did? I mean, in relation to your stock. Let's

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not get in generalities, but just tell me the story about your stock, how you came to offer it for sale. A. Well, I'd have to admit I got thrown in jail that night.

Q. Tell me about that. Was that the night you got back out in the Basin? A. It was the same night, yes. March 10.

Q. The same night you got out of prison? All right. And tell me what happened. A. Then I went to the court the next morning on the drunk driving charge.

Q. Which court was that? A. John B. Gale.

Q. All right. What happened when you got there? A. Well, I got there, and--

MR. BERTOCH: I object to this, your Honor, unless it

has something to do with the stock. Irrelevant.

Q. (By Mr. Nielson) Withdraw that and rephrase it. When you got there to court with John B. Gale, did you have any conversation with John B. Gale about your stock? A. He asked me if I was going to sell my stocks.

Q. What did you tell him? A. I told him I didn't know at the time.

Q. All right. Anything further that was said about your stock?

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A. I don't believe so. Not that particular time there wasn't, because he sentenced me to jail, and I told him that I'd have to pay that fine if I did sell my stocks, and I'm pretty sure that the conversation went like that.

Q. Well, did he say anything to you that indicated he might be interested in buying your stock? A. Yes.

Q. Tell me about that. A. He said that if I decide to sell, to come and see him.

Q. All right. Then did you go to jail that day, or did Mr. Gale release you? A. He released me. And I went back down to my sister's place that's living there in Roosevelt and fell asleep.

Q. Is this the same day? A. The same day, yes.

Q. You went down to your sister's place and fell asleep? A. Yes.

Q. All right. Now, on that day while you were down at your sister's place did you have occasion to see Mr. Nick Murray? A. Yes. He come down there driving a '59 Cadillac.

Q. What time of day was that? A. Oh, gee, around 4:30, 5 o'clock in the afternoon.

Q. All right. Did you talk to Mr. Murray when he got there?

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A. Well, he said that he heard that I was looking for a '59 Cadillac--or, a Cadillac. And--

Q. Now, let me interrupt you there, Mr. Reed. Had you prior to this time on any occasion had any discussion with Mr. Nick Murray about wanting a Cadillac? A. No.

Q. Did you have any knowledge about how he may have learned that you wanted a Cadillac? A. There was only one person that could have told him, because I only told two, and that's my mother and dad.

Q. So you think maybe your mother or dad told him? A. Well, I know my dad told him.

Q. Now, this was the same day when you got picked up for drunk. How were you feeling at that time, Mr. Reed?

* * * *

A. What was your question again?

Q. (By Mr. Nielson) I'm asking you how you felt at the time he came over there. A. Well, I was--I had a hangover. I was still coming off of this drunk that I had been on the night before.

Q. All right. Now, when Mr. Murray said that he heard you were looking for a Cadillac, did you say anything to

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him? A. I told him yes, I was looking for a Cadillac.

Q. All right. Then did you talk about buying that Cadillac? A. Well, not then, no. But he asked me to go for a ride in it, he wanted to show me how good it was and this and that. So I went for a ride with him.

Q. Did you tell Mr. Murray that you were interested in that particular Cadillac? A. Well, not right off I didn't. Of course, I didn't feel like talking too well right at the moment, because I still had this hangover. But on the way from Roosevelt, well, he did have a drink, and I've drank with the man before. So naturally he had that, and I was sick. So I took a few shots.

Q. All right. Then I take it Mr. Murray had some alcohol with him there at the Cadillac? A. Yes. He had a full pint of whiskey.

Q. All right. Could you tell me how many drinks you had out of that bottle of whiskey? A. No, I couldn't say how many I had.

Q. How long were you with Mr. Murray that day? A. Oh, it couldn't have been--oh, I'd say about an hour.

Q. Were you drinking all of the time? A. Well, a pint of whiskey don't last very long. There

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was four of us, I believe, in the car.

Q. Would you tell me who the others were? A. Ken Phillips and Chuck Ray.

Q. Did you have any further conversation with Mr. Murray about selling your stock on that day? A. There was some, but I can't remember just what was said. I know it was--it was getting dark when--I don't know. He had to go somewhere, and I had to go somewhere. And I borrowed \$30, and we separated then, I'd say after about an hour.

Q. Then did you have occasion to see Mr. Murray the next day? A. Yes. I believe it was around 10 o'clock that morning.

Q. The following morning? A. Yes.

Q. Where was that? A. I believe he come down and picked me up at my sister's place.

Q. Did you have a conversation with him then about selling your stock? A. Yes. That's when we--I made up my mind to sell him the stocks. So he said that we had to go to Roosevelt--I mean, to Fort Duchesne--to pick up some papers saying that--I can't remember now just what it was. I'm in the same state this day, because I was drinking the night before.

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Q. You're in the same state in respect to what? A. To alcohol. Still had a hangover more or less.

Q. I see. All right. Did you go down to Duchesne with him--or, to Roosevelt? A. To Fort Duchesne.

Q. Fort Duchesne? A. Yes. He said he had to go over there and pick up some papers.

Q. Did you go over there and pick up some papers? A. Yes. We went over there and picked up some papers. I don't know whether it was paper or papers.

Q. Did you pick them up, or Mr. Murray? A. He sent me in to get them.

Q. Where did you go? A. Fort Duchesne. I went in and seen Mrs. Logan.

Q. All right. What did you get from Mrs. Logan? A. A piece of paper.

Q. Do you know what the piece of paper was? A. I believe she said it was a release on the stock--or, stock or something. I can't remember just what at was.

Q. Well, did you look at the piece of paper you got when you picked it up from her? A. Oh, I imagine I looked at it, but--

Q. Would you be able to recognize it if you saw it again? A. No. I'd say no. I couldn't.

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Q. All right. After you talked to Mrs. Logan, then what did you do? A. Went back out and got in the Cadillac, and we went back to Roosevelt. And he said he had to call--I believe at that time it was--well, in fact, I know he said he had to call Lorena. Or, he had to call one of the board members. And I tried to call, I can't remember who the other one was, but I know he got in touch with Lorena Iorg.

Q. You're talking about the board members of UDC? A.

Yes.

Q. After that happened, what occurred? A. Then we had to go to John B. Gale's office.

Q. All right. When you got down to Mr. Gale's office, did you sign some papers? A. Yes. I signed two papers that were--looked like they were run off on a mimeograph.

Q. I'll show you in the file bearing your name, which is Exhibit 5-A, what purports to be an affidavit bearing your signature. Is that your signature? A. That's my signature.

Q. Is that one of the papers that you signed there in front of Mr. Gale? A. Well, I say it looked like that.

Q. Now, I'll ask you, Mr. Reed, if at the time you signed this piece of paper, all of the blanks were filled in.

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A. There was nothing in there, no. They was to take care of this. The deal was all settled as far as me and Nick was concerned.

Q. Did you have any discussion with Mr. Gale about the blanks? A. Well, he asked me if I had got the money for it. But I--in my answering him, I told him everything was square, because he was--he had already asked me to buy the stock. So why should I tell him--tell him whether I got the money out of it or not? I didn't know that he was--that my stocks was under him in the bank. I didn't know this.

Q. I see. So you at that time felt that he and Mr. Murray were competitors, and so you didn't want to talk with him about it? A. Right.

Q. I see. Did Mr. Gale have you raise your right hand and take an oath when you signed that paper? A. No.

Q. All right. The next paper is a stock power that purports to bear your signature. Is that your signature? A. Yes.

Q. Was that also one of the papers that you signed there in front of Mr. Gale? A. I wouldn't--I'm not saying it was. It looked like it. It's quite a bit like it. All I know is it was blue.

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mimeograph writing on it. It was blank, and I signed it. They said this is what I had to do in order to sell the thing. So that's just exactly what I done.

Q. I see. So then that document was also blank when you signed it? A. Yes. I signed two documents.

Q. All right. While you were there with Mr. Gale, did you have any discussion in his presence with Mr. Murray about the Cadillac? A. I can't remember if I did or not.

Q. After you signed these papers in front of Mr. Gale, will you tell me what happened with the Cadillac? Did you take the keys to the Cadillac and drive it off? A. Well, I didn't. My sister did. She drove the car. I didn't have no--in fact, I put the car in her name.

Q. Did you ever get a certificate of title to that car from Mr. Murray? A. No, I didn't.

Q. Did you sign some papers in Mr. Murray's office relative to the ownership of that Cadillac? A. I signed a contract.

Q. I see. A. I still owed some money.

Q. Did Mr. Murray give you any cash at all other than the \$30 that you have already referred to?

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A. Well, when he made the deal with me, he said that I could have the first couple of checks that come in off of them stocks. And I believe that come up to about \$300--two hundred and--or, maybe--a little over \$200. And that day when we made this transaction there, I borrowed--I told him I wanted to borrow \$450 from him, and that I would pay this back to him within three months. Well, when the contract was written up, well, I--I guess he just added it right on to the--against the car.

Q. I see. All right. Now, at the time you were down there with Mr. Gale, did Mr. Gale tell you that you shouldn't sell the stock?

MR. BERTOCH: I object to that as leading and suggestive.

THE COURT: Overruled. He may answer.

A. Did you say--did he tell me not to sell it?

Q. (By Mr. Nielson) Yes. A. No. He wanted to buy it.

Q. I see. Did he tell you anything about what the stock represented? A. No.

Q. Did he tell you anything about what the value of the stock was? A. No. The only thing that was said on the value of the stock--

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MR. BERTOCH: I object to this. Unresponsive to any question.

THE COURT: He may answer.

A. The only thing that was said about the prices of the stock and that, they said they couldn't--well, I won't say they--Nick told me that they couldn't get the full value out of it. Well, I understood this letter to say that I couldn't sell the stock for less than \$6,500, because that's what I advertised it for.. And I asked him how could I sell it if I don't get the \$6,500, how am I going to tell the people at the office that I'm not getting the \$6,500. And, I don't know, he "hawed" around there. But I guess I had to lie to Mrs. Logan, saying that I did get the \$6,500.

Q. (By Mr. Nielson) Well, did you ever talk to Mrs. Logan about the \$6,500? A. No.

Q. Did you ever tell her that you got \$6,500? A. I don't believe so.

Q. Did you ever tell anyone that you did? A. Nobody.

Q. Mr. Reed, do you know what "unadjudicated and unliquidated claims against United States" are? A. What's this?

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Q. Do you know what "unadjudicated and unliquidated claims against the United States" are? A. No. I don't even know what you mean.

Q. Do you know what "assets not susceptible to practical and equitable distribution" are? A. No.

Q. Have you ever owned a share of stock before? A. No.

Q. Do you know what "dividends" are? A. Well, I have an idea what they are.

Q. Do you know what a fiduciary is? A. No.

Q. Do you know what a trustee is? A. Well, a trustee is supposed to be a--in other words, I could be put in your trustee, or you--in other words, you're supposed to be watching out for me. If I get you--in other words, if I get you as a lawyer, you're supposed to--that there would be a sensible word of a trustee, wouldn't it?

Q. Well, I'm asking you. A. Well, I don't know. I guess I don't know what a trustee is.

Q. Did you know what an affidavit was? A. No. I can't--I couldn't explain it to you, I guess, what it is.

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Q. Well, you understand in your own mind what an affidavit is? A. I guess I'd have to answer that no, I couldn't.

Q. Do you know what a stock power is? A. No.

Q. Do you know what a negotiable instrument is? A. Like a check or--

Q. All right. Now, Mr. Reed, how long did you keep

that Cadillac that you got from Mr. Murray? A. I had it about eleven days.

Q. What happened to it at the end of eleven days? A. It was wrecked.

Q. Where was that? A. In Heber City.

Q. Will you describe for me the damage--were you driving at the time? A. No. A girl was driving it.

Q. Were you with her? A. Yes, I was in the car somewhere.

Q. After the car was wrecked, did you have any further discussion with Mr. Murray about it? A. Well, he was there the next morning at 10 o'clock, because I know I was trying to get word out home, because I wanted to get out of jail to--he was already there by the time I--well, about 10 o'clock that morning.

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Q. Could you describe for me what conversation you had about the car when Mr. Murray got there the next morning? A. Well, we went down and looked at it, and he paid my fine, \$25. I got out of jail. We went down and looked at the car. And one of the fenders was fouled up, and I believe the right side of the car. Of course, I'm not definite right today which side it was, but--estimated it would cost about \$185 to \$200 to fix it.

Q. I see. And did you have any conversation with Mr. Murray about it? A. Well, we went down to the--I can't remember the beer joint or wherever it is, that's on the this side of Heber. There is a little beer joint on the outskirts of town there, and he went in there had a few drinks in there. I believe it was on a St. Patrick's Day, because everybody in the bar was all painted green, put this food coloring all over them.

Q. All right. What conversation did you have about the automobile? A. Well, he asked me what I was going to do, and I didn't know what I was going to do, because I know one thing. I wanted to get out of Heber. I was on parole, and I was worried about going back to prison. So he had a '57 Ford that he--I believe it was--no, it wasn't '57, it was a '59, I believe it was. Well,

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between a '59 and '61, I guess. He had this Ford there, and he told me that he'd give me that Ford. And I can't remember just what all, but anyway, I told him that I didn't want the Ford. I didn't want another car, probably just get me in trouble again. So I just told him to give me a thousand dollars, and we'd call everything even.

Q. Did he give you a thousand dollars. A. Not right at that particular time. He give me a couple of hundred dollars that day, I believe it was, and said he'd send me some more the next day.

Q. Did he later on send you additional money to make up the \$1,000? A. Yes. Plus--well, one of the checks that he'd give me I tried to cash it there in Heber. On this particular day, Glen Rea was driving me out to pick up this check. I believe it was a \$200 check. But I had met my folks on the way and come back into Heber, and they had a check there for me for \$75 and one from Nick Murray for \$200, I believe it was. So I went into the bank there, and I cashed the \$75 check. And I tried to clear the other check, and they said he never had no funds. So I give this check back to my mother and told her to tell Nick I wanted that money out there that night. So I went back into Salt Lake, and I can't remember.

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now--I got drunk that night. I can't remember what day it was. It was two or three days later, anyway, before I got the money back out to me.

* * * *

Q. (By Mr. Nielson) What happened to the Cadillac there at Heber City after this conversation with Nick? A. Nick and the guys drove it back to Roosevelt.

Q. All right. Have you ever seen the Cadillac since? A. I seen it one time down behind his father's garage, because I had to go down there and get some stuff out of it.

Q. But at any rate, you don't have it? A. No, I don't have it.

Q. Did you sign any papers to that Cadillac at the time you were talking with Nick in Heber? A. I can't remember if I did or not.

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* * * *

MR. NIELSON: You may cross-examine.

CROSS-EXAMINATION BY MR. KLEMM

Q. As I understand your testimony, you were in the state prison at the time that you posted your stock for sale; is that correct? A. Yes. I'm quite sure I was. Well, in fact, I'd have

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to be.

Q. You received word from someone, then, that if you wanted to sell your stock, you had to post it; is that correct?
A. Yes.

Q. As a matter of fact, you knew that anyway, didn't you?
A. No.

Q. Hadn't you also transferred some previous stock?
A. Transferred?

Q. Hadn't you sold some stock in the Antelope Sheep Creek Corporation?
A. Oh, yes.

Q. And the Rock Creek Cattle Corporation?
A. Yes.

Q. As a matter of fact, you had owned other stock then, hadn't you, Mr. Reed?
A. Yes.

Q. And this wasn't the first stock you had ever owned?
A. You're right there.

Q. And you were familiar with that stock, and you were familiar with the procedure that had to be followed, weren't you?
A. There was two different procedures. It wasn't the same as the first one.

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Q. Well, what were the differences?
A. Well, the first one, I got to see the certificate. I read on there that if I sold them, I could not fish on any ground or hunt or anything else. I couldn't run my cattle or anything on that ground.

Q. Yes. But you still had to post them for sale, didn't you, the others?
A. I don't think so.

Q. Didn't you ever post your stock for sale?
A. Not on the sheep and cattle range rights, no, I didn't. Only--the only obligation I had there was I had to give the Tribe the first chance of buying it.

Q. Did you do that?
A. Well, that's the only way they'd let me sell it.

Q. How did you do that? Didn't you do that by posting through the Bureau of Indian Affairs?
A. Well, I don't know whether you'd call it posting. I had to go down to the Bureau of Indian Affairs and sign a paper, I believe.

Q. Mr. Reed, I show you the offer to sell that was signed by you in connection with your sale of the Ute Distribution Corporation stock, and I ask you if you didn't fill out a similar offer in connection with your stock in the other two corporations?
A. No.

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Q. As a matter of fact, you somehow found out that this had to be posted while you were in the state prison; isn't

that correct? A. Yes. Like I say, the board members sent out --there was two different letters that came out to me. They said on one of the letters that I did now have 10 stocks or something, that I could sell them, or something. I can't remember now. But they're the first ones that notified me.

Q. And the other letter told you how to sell? Told you what you had to do? A. Yes.

Q. And those letters came from the Ute Indian Tribe, or did they come from the corporation? A. I can't remember. It seems to me it came from the superintendent at the time. I'm not positive, but--

Q. Well, look, you posted--at least, you sent in this exhibit that I just showed you, didn't you? A. Yes.

Q. That was your signature, wasn't it? A. Yes.

Q. Then about sixty days later you received a letter entitled a "Notification," didn't you? A. I don't know about the sixty days.

Q. Well, at least, you did receive the notification while

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you were still in the Utah State Prison on that occasion, didn't you? A. Notification for what?

Q. I'll show you the part of Exhibit 5-A that is titled a notification and ask you if you received that while you were in prison. A. Yes. I remember getting that--I believe I wrote a letter to my folks to have them post it for me. I believe that's the way it was.

Q. Now then, subsequently when you did sell your stock, you signed an affidavit, and that affidavit is also part of Exhibit 5-A, is it not? A. I signed this? When I sold it?

Q. Yes. A. Is this something similar to the one that --yes. It's got to be one like that.

Q. That is your signature, isn't it? A. One--one small and one big one I signed when I sold it. Yes.

Q. And you can read, can't you, Mr. Reed? A. Pretty good.

Q. You never had any trouble reading those documents, did you? A. I never had trouble reading hardly anything. It's just understanding is the trouble.

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Q. So you offered to sell your 10 shares for \$6,500, didn't you? A. True.

Q. Later you accepted the Cadillac, didn't you? A. Yes.

Q. Now, you told Mr. Gale when you went to the bank that the deal was okay, you had made the deal? A. I didn't go to the bank.

Q. Well, where did you go? A. I went to his office.

Q. Wasn't that at the bank? A. No.

Q. Where was it? A. It was at his home.

Q. His office in his home? And you told him then that everything had been squared away? A. Yes. I answered that question once.

Q. Now, it seemed to you at the time that Mr. Gale and Mr. Murray were actually in competition for that stock, didn't it? A. It appeared that way, the way he asked me if I wanted to sell, the first thing I seen him that morning.

Q. Didn't he in fact discourage you from selling to Mr. Murray later? A. Well, he was a little shook up because I did make the

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deal with Mr. Murray. He was--in other words, he was--he seemed to be a little irritated.

* * *

CROSS-EXAMINATION BY MR. PAULSON

Q. Mr. Reed, you had told your father initially that you wanted to buy a Cadillac just as soon as you got out of prison; is that right? A. Well, I wasn't talking directly to him. My mother and dad was both there, and I mentioned that I wanted to get me a brand new Cadillac, and then I could sell that and get the money out of it.

Q. And you found out later from Mr. Murray that it was your father who told him that you were interested in buying a car? Isn't that correct? A. Well, I don't know if he mentioned that or not. Could have done. But I know this. He's the only that could have told him.

Q. I see. When you first began talking to Mr. Murray about his buying your stock, isn't it true that he told you that he would not pay you the \$6,500 which you were asking?

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A. Well, he said he couldn't--he couldn't pay the \$6,500 that I was asking.

Q. And you continued to negotiate with him, is that correct? A. Well, sure. He was--I guess we was negotiating. We was going across the flats there having a few drinks, talking about this. Under normal conditions I probably wouldn't

even have talked with him--I probably wouldn't even have sold it.

Q. What do you mean, normal conditions? Your normal condition is that you're drunk, isn't it? A. Well, a big part of the time, I guess I am.

Q. So the difficult thing with you is to find you sober, isn't it, when you're out of jail? A. Yes.

Q. All right. So you weren't in any different condition than you usually were at the time you made this transaction with Mr. Murray? Isn't that right? A. I guess you're right.

Q. And you were sober enough that you remember all of these little details that you've testified to, weren't you? A. Well, it's quite obvious.

Q. And isn't it true that Mr. Murray made you an offer of \$3,500 for your stock?

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A. I believe so. For the whole ten shares.

Q. Isn't it also true that you accepted that offer?

A. I believe so, yes.

Q. Isn't it also true that it was you, not Mr. Murray, who provided the liquor? A. No.

Q. You did not? A. Definitely not.

Q. And the liquor that you're talking about is a pint bottle of whiskey? A. Yes.

Q. Shared by four people? A. Yes.

Q. But that was not available on the day of the transaction, was it? A. No. It didn't need to be.

Q. On the day of the transaction, there was no liquor involved? Correct? A. Just a few beers that I had that morning.

Q. But they were not provided by Mr. Murray, were they?

A. That's true.

Q. And the transaction was completed in his office, the place where he sells cars? A. Right.

Q. And you got there on your own, didn't you?

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A. Yes.

Q. Isn't it true that the deal was that he was to give you a Cadillac, that particular Cadillac, and \$1,500 cash? A. No.

Q. That was not the transaction? A. That was not the deal. In fact, I owed him \$450 after that transaction at that day.

Q. Did you get \$1,500 actual cash that day? A. No.

Q. Do you remember when we took your deposition down

at the state prison a few months ago, Mr. Reed? A: Yes.

Q. Do you remember being placed under oath at the time?
A. Yes.

Q. Referring to page 21 of your deposition, isn't it true that you were asked these questions and that you gave these answers: "Question: Well, did you in fact get \$6,500 out of your stock? "Answer: No, I didn't. I didn't. I got \$1,500 actual cash. "Question: You remember what you did get for that stock? Was it \$1,500 actual cash? "Answer: Actual cash, yes." Were those the questions, and were those the

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answers you gave? A: Yes.

Q. And isn't it true that you did then receive \$1,500 actual cash, plus the automobile? A. No. You misunderstood me all along there.

Q. Well, what is the fact then, Mr. Reed? A. I made a deal for the Cadillac. All right. I got the Cadillac. So at the same time I got the Cadillac, I borrowed \$450, which I said I'd pay back within three months. After I left Roosevelt-- after I--after the deal was all settled and I wrecked the car, I sold it back to him for \$1,000. Okay. That's \$1,450 that I've got so far. Well, wait a minute. That would be \$1,480, because I got \$30 from the night that he come down to see me. That would be \$1,480. That's not counting the--I had forgotten about the two checks that he let me have, one of them for two hundred some dollars and another one for seventy-five. So in actual cash on the whole deal, I got \$1,800 and got the Cadillac.

Q. You also got about the money that it cost him to bail you and your girl friend out of jail, didn't you? A. Well--

Q. That was \$25? A. Yes.

Q. You stated \$25 a few minutes ago.

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A. I believe it was about that, yes.

Q. You also received some other checks from Mr. Murray, did you not? A. Other checks?

Q. In addition to what you've told us here now. A. No.

Q. Was it your feeling that the deal for the sale of the stock was completed at the time the Cadillac was delivered to you? A. Well, I don't know for sure. This here was all quite confusing to me when I first got out of here--not out of here, but out of prison--and me drinking and that all the time the first few days. I was only out of prison twenty-eight days.

So there is a lot of this that's still got me confused on the whole deal. I mean, it's still confusing.

Q. Didn't you testify a few minutes ago that when you went to Mr. Gale's office--I think these are your words--"The deal was all settled so far as me and Nick was concerned"? A. I did say that, because why should I tell John B. Gale anything different?

Q. All right. As far as this transaction with Mr. Murray whereby he purchased back the Cadillac after you had wrecked it, that had nothing to do with the sale or purchase of the stock, did it?

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A. Well, I don't know if I can answer that yes or no.

Q. Hadn't you already turned the stock over to him eleven days before that, or signed the necessary papers, rather? A. Yes. Yes. The papers were already signed.

Q. And the car had been turned over to you? A. Yes.

Q. And he had nothing to do with the wrecking of the car, did he? A. No.

Q. So you made him an offer after you had wrecked your car, you said, "You give me a thousand--" A. No, he made me an offer. He wanted to give me a Ford. And I told him I didn't want it.

Q. After you turned that down, you said to him, "You give me a thousand dollars cash, and we'll call it square?" A. That's about the idea.

Q. He gave you \$1,000 cash? A. Not right then and there, he never give me any thousand. It took a couple of days --or, three weeks at the most, I believe, to get it taken care of.

Q. But you did get the money that you asked him to pay you? A. Yes.

MR. PAULSON: That's all.

CROSS-EXAMINATION BY MR. BERTOCH

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Q. What is your age, Mr. Reed? A. What is that?

Q. Your age. A. Thirty.

Q. What is your education? How much education did you have? A. Well, I went, I'd say, about six months of the ninth grade.

Q. Any trade school since? A. I've taken up radio and television, diesel mechanics, and never completed neither one of them.

Q. Were you in the military service? A. Yes.
Q. What did you do there? A. I was engineman in the Navy.
Q. What was your rate? A. Fireman apprentice.
Q. Do you know what it means to be under oath? A. Yes.
MR. BERTOCH: That's all I have, your Honor.

THE COURT: Thank you.

REDIRECT EXAMINATION BY MR. NIELSON

Q. Just one question, Mr. Reed. When Mr. Paulson was •

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questioning you about your drinking, you made the statement that you didn't think you would have sold the stock under normal conditions. Could you explain for me what you meant by that?
A. Not being drunk, because I am drunk quite often.

* * * * *

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ORAN F. CURRY called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

THE CLERK: Will you state your name, please?

THE WITNESS: Oran F. Curry.

DIRECT EXAMINATION BY MR. NIELSON

Q. I'm going to speak loud, knowing that you don't hear too well, and I'll ask you to answer loud, so that every one in the courtroom can hear you, the judge and the reporter and everyone. Now, Mr. Curry, where do you live? A. Neola, Utah.

Q. And you a member of the mixed blood group of the Uintah Indian Tribe? A. Yes, sir.

Q. Was your name published on the mixed blood rolls by the Secretary of the Interior? A. Yes, sir.

Q. Is your mixed blood No. 59? A. Yes, sir.

Q. Mr. Curry, did you receive 10 shares of stock in the Ute Distribution Corporation? A. Never received it, but knew that I had it.

Q. You knew that you had 10 shares of stock? A. Uh

huh.

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Q. I'll show you, Mr. Curry, a document in a file with your name on it, which is Exhibit 9-A in this case, which purports to be a stock certificate bearing your name for 10 shares.

A. Yes.

Q. Did you ever see that? A. Yes.

Q. You did see that stock certificate? A. I don't remember.

Q. Well, you knew that you had that stock certificate, though, didn't you? A. Yes.

Q. All right. Now, Mr. Curry, after you learned that you had 10 shares of stock, did you attempt to sell your stock? A. Yes, sir.

Q. And did you go out to the Uintah and Ouray Agency and offer your stock for sale? A. Part of it, yes, sir.

Q. Do you recall what the offering price was? A. It was advertised, I can't recall now just what it was advertised for at that time.

Q. I'll show you what purports to be an offer to sell in your file. It says \$3,500. Does that sound right? A. Yes, sir.

Q. And after you made that offer to sell, did you

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subsequently attempt to sell your stock to someone? A. Yes, sir.

Q. All right. Was that on one occasion or more than one occasion? A. More than one.

Q. Okay. Let's take the first one. Who did you sell it to? A. I can't recall offhand.

Q. Let me see if I can help you, Mr. Curry. A. Okay.

Q. In your file there is a certificate reciting that you received \$700 from John D. Chasel. Does that help you any to recall who you sold it to? That was for one share? A. Yes. But not for that amount.

Q. You didn't get that amount of money? A. No.

Q. Is that your name on the certificate? A. Yes, sir.

Q. Do you remember signing that certificate? A. No, sir. Oh, my name, but not the number--figure.

Q. I see. How much did you get, Mr. Curry? A. I think it was \$85 in cash and the balance in repairs, automobile shop, and a trade in to a man by the name of John Chasel.

Q. John Chasel?

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A. Yes.

Q. Does he run a store out there? A. Serviceman.

Q. Okay. A. It was for \$400.

Q. \$400 worth of trade with Mr. Chasel? And how much money did you say? \$84? A. \$85.

Q. \$85? A. Uh huh.

Q. All right. The certificate bears the seal of Mr. John B. Gale. Did you go before Mr. Gale when you signed that?

A. Yes, sir.

Q. Did he have you raise your right hand and put you under oath? A. I don't recall, sir.

Q. Did you have any conversation with Mr. Gale about what you were getting for that stock? A. I believe I did.

Q. Would you tell me what that conversation was? A. I took a job up at John Chasel.

Q. Yes. A. And we didn't have much conversation at that time. And I had agreed on what we were to--he was to pay me.

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Q. Did you discuss that with Mr. Gale? A. No. Only just had him fix the papers for us.

Q. All right. Now, turning to another document in this file, what purports to be a certificate dated February 13, 1964, recites that you received \$700 from Mr. Orin Swain for one share of stock. Do you remember selling some stock to Mr. Swain? A. Yes. But the same way for the same amount. For merchandise. \$400.

Q. You got merchandise, \$400 worth of merchandise? A. Yes.

Q. And any cash at all? A. No cash at all.

Q. All right. So then that takes care of two shares that you sold, Mr. Curry. I'll now turn to a document in your file which again purports to be an affidavit. Now, let me go back to that other affidavit for a moment, Mr. Curry. This affidavit also bears the signature and the seal of Mr. John B. Gale. Did you go before Mr. Gale when you signed that? A. Yes, sir.

Q. Did he put you under oath, have you raise your right hand? A. No, sir.

Q. All right. The next one is an affidavit signed by you

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reciting that you sold 3 shares of stock to Mr. Clyde Murray for \$2,100. Did you sell some stock to Mr. Murray? A. Yes, sir, but not for \$2,100. I can't recall, but it wasn't \$2,100

Q. Do you remember what you did get from Mr. Murray?

A. I think it was \$1,600.

Q. \$1,600 cash? A. Yes.

Q. Was that all cash? A. Yes, sir. Cash. They was \$100 deposit made first when we were tying up the deal. And later I got another \$100 from him. That made \$200. And that would bring about \$1,800 total.

Q. I see. So you got some money from him before you actually signed the papers; is that right? A. Yes.

Q. All right. Now, did you go down before Mr. John Gale when you signed that affidavit or that piece of paper? A. Yes, sir.

Q. Did he have you raise your right hand and swear? A. No, sir.

Q. When was that? A. I don't remember.

Q. Was that document filled out when you signed it? Were all the blanks filled in when you signed that?

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A. I don't believe so, All but my--I signed that, but the number--figures was not put on, I don't recall. But--

Q. Okay. How about the other two affidavits that we looked at? Were they filled out when you signed them? A. No.

Q. All right. Now, the next document in this file I'd like to show you, Mr. Curry, is an affidavit dated August 18, 1964, which recites that you got \$1,200 from Mr. Dick Bastian for 2 shares. Did you sell some stock to Mr. Bastian? A. Yes, sir.

Q. And is that your signature on the affidavit? A. Yes, sir.

Q. Was that affidavit all filled out when you signed it? A. No, sir.

Q. What part of it wasn't filled out? A. The price. This here (indicating).

Q. The \$1,200? A. Yes.

Q. Okay. How much did you get for that stock that you sold, the 2 shares you sold to Mr. Bastian? A. I believe \$600.

Q. Turning to the next one, Mr. Curry, this is an endorsement on the back of a stock certificate of Ute Distribution Corporation, and it says that you're selling one share of stock to Mr. Dick Bastian. Do you remember that one? Is that

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your signature? A. Yes, sir.

Q. How much money did you get for that share? A. \$300.

Q. Did you get anything besides the \$300? A. No.

Q. The next one is another endorsement on a certificate

that says you're selling one share of stock to Dick Bastian. How much did you get for that one? A. \$300.

Q. Anything besides the \$300? A. No.

Q. And the last one, Mr. Curry, is another endorsement on a stock certificate. It says you're selling one share of stock to Dick Bastian. How much did you get for that one? A. The same.

Q. \$300? A. Yes.

Q. Anything besides the \$300? A. No.

Q. Mr. Curry, I'm going to show you what has been marked as Plaintiffs' Exhibit No. 74, which purports to be a letter addressed to you from Calvin E. Anderson of the First Security Bank. Did you receive that letter on or about the date it bears?

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A. Yes, sir.

Q. And attached to that letter, Mr. Curry, is what appears to be a letter in handwriting signed by yourself. Did you write that letter to Mr. Anderson? A. Yes, sir.

Q. Will you tell me what that's all about, Mr. Curry, these letters?

MR. KLEMM: I'll object to that. They speak for themselves, your Honor.

THE COURT: Reframe your question.

Q. (By Mr. Nielson) Mr. Curry, I'll ask you to read your letter to Mr. Anderson, if you will, please.

THE COURT: Has it been received in evidence?

MR. NIELSON: It has, subject to the stipulation.

THE COURT: All right.

Q. (By Mr. Nielson) Maybe it would be easier if I read it. Is your eyesight good, Mr. Curry? A. Yes. I'll take my glasses off. "Neola, Utah. C. E. Anderson, First Security Bank, Salt Lake City, Utah. Dear Mr. Anderson: Before writing you, I wish to identify that I--that we are members of the Affiliated Ute Citizens of Utah. We wish, if possible, records with respect to our stock shares. Della H. Curry, Neola, Utah. Oreane C. Johnson Garcia, Gallup, New Mexico. We have all sold

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our stock shares. Some were advertised for sale, I believe (five of each). We'd like to have the record of the amount advertised and whom they were sold to, and so forth. Would appreciate getting reply as soon as possible, and where we can get record--records. There is a meeting being called July 17, 1965, and we'd like the records for that meeting. Sincerely, Oran F. Curry."

Q. Now, do you recall what meeting it was you had reference to, Mr. Curry? A. Yes, sir.

Q. Will you tell me what that was? A. That's a Affiliated meeting.

Q. Did you ever get the records that you requested from Mr. Anderson? A. I don't recall.

Q. I'll ask you to read, if you will, the last paragraph of Mr. Anderson's reply to you. Will you read that for the Court? A. This last part?

Q. Yes, last paragraph. A. The date--

Q. Why don't you read the date, so we'll have that? A. Date, July 13, 1965. "We are not at liberty to give out information

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regarding to whom the shares were issued. If you sold those to an individual, you should know to whom they went. We are only the transfer agent of this company, and have no information regarding how much they were sold for. At the time that it was necessary to advertise them for sale, these records were kept with the Bureau of Indian Affairs in Fort Duchesne, Utah. We would receive a clearance from them before we would make the transfer. Very truly yours, Calvin E. Anderson."

Q. Now, Mr. Curry, did that meeting that you referred to in your letter have anything to do with this lawsuit? A. I don't think so.

MR. NIELSON: That's all the questions I have of Mr. Curry, your Honor. I would at this time, however, like to offer Plaintiffs' Exhibit 9-B, which is the social worker's file. I offer that only against the United States.

THE COURT: You said last time there was only one sentence you thought was material?

MR. NIELSON: In the other one. The portion I am interested in this case, if the exhibit is received, your Honor--I don't--

THE COURT: Well, I want to see, so that we're sure we're not futilely encumbering the record.

MR. NIELSON: My purpose in offering these is

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merely to show that the United States did compile information on each one of these plaintiffs; and I think it's helpful for the record to have in the record what information they did have on them. And--

THE COURT: Now, with reference to that matter, is this the Indian Agency out there?

MR. NIELSON: Yes, it is.

THE COURT: And it isn't any independent department where these files come from?

MR. NIELSON: They come from the Uintah and Ouray agency, your Honor.

THE COURT: I see. All right. The exhibit will be received.

MR. KLEMM: Your Honor, for the record, I'd like to state that these were records that were made by non-Government employees, and the investigation was made by the University of Utah, and we will have evidence on this at a later time. We'll explain how they became part of our records.

THE COURT: I see. I suppose the point is not necessarily that the Government kept them, but that they were charged with notice?

MR. NIELSON: Yes, your Honor. They have knowledge of these matters; and, also, I think, as Mr. Klemm will

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readily concede, the work that was done by the University of Utah was done specifically at the request of the United States and under their supervision.

THE COURT: Well, we'll leave the development of that--

MR. KLEMM: I will not concede that at this time.

THE COURT: We'll leave that to future evidence. For the time being, the exhibit is received.

(Plaintiffs' Exhibit No. 9-B received in evidence.)

CROSS-EXAMINATION BY MR. KLEMM

Q. Mr. Curry, you've just proved to us that you can read; and I would like to ask you how many years of schooling you have had. A. I went to high school.

Q. Did you graduate from high school? A. No, sir.

Q. Where did you go to high school? A. Haskell Institute, Lawrence, Kansas.

Q. Now, you're not employed at the present time, are you? A. No, sir.

Q. You're in a retired status; is that correct? A. Yes, sir.

Q. Who did you work for before you retired?

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A. Indian Forest Service.

Q. Was that a branch of the United States? A. No, Indian Agency Department, Interior Department.

Q. But you were employed by the United States Department of Interior? A. Yes, sir.

Q. Do you now receive a pension from that department?

A. Yes, sir.

Q. Do you have any other source of income? A. Social Security.

Q. So you obtain both a pension under Civil Service and the Social Security benefits? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Now, Mr. Curry, you were once a member of the Tribal Business Committee, weren't you? A. Yes, sir.

Q. When were you a member of that group? A. When, did you say?

Q. Yes. A. Oh, it's been about fifteen years back.

Q. And as a member of the Tribal Business Committee, you became familiar with some of the assets of the corporation, didn't you?

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A. Yes, sir.

Q. And you were familiar with the type of property that was put into the Ute Distribution Corporation, weren't you?

A. Yes, sir.

Q. Now, Mr. Curry, you received some other stock in other corporations when the termination of the mixed bloods occurred, didn't you? A. Yes, sir.

Q. Now, what other corporations were involved? A. That's about all.

Q. Well, there was the Rock Creek Corporation; wasn't

there? A. I wasn't--I was just a member in that. I hadn't taken any part in the organization.

Q. And did you sell your stock in those two corporations? A. Yes, sir.

Q. And those were land corporations, weren't they? A. Yes, sir.

Q. And at the time that you sold your stock you had to post it, didn't you? A. Yes, sir.

Q. And you also had to post your stock in the Ute Distribution Corporation, didn't you? A. Yes, sir.

Q. Now, Mr. Curry, you knew, did you not, that you were required to obtain the same amount for your stock as you

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posted it for, weren't you? A. I don't know.

Q. Mr. Curry, after you posted your offer to sell with the Bureau of Indian Affairs, didn't you receive a letter from the superintendent? A. I don't recall.

Q. I show you a document that is found in Plaintiffs' Exhibit 9-A that purports to be a notification signed by Mr. Zollar. A. Yes, I did.

Q. You did receive that, didn't you? A. Yes, sir.

Q. And you knew that you were required to obtain the same amount of money as you posted your stock for; isn't that correct? A. I don't know.

Q. Now, Mr. Curry, you were very knowledgeable in the tribal and mixed blood affairs, weren't you? A. Yes, sir.

Q. You were also involved in those, weren't you? A. Not always.

Q. Well, your son-- A. Sometimes.

Q. Your son works for the Tribe, doesn't he? A. Yes sir.

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Q. And you discussed some of the matters with your son, didn't you? A. Not too much.

Q. Well, weren't you familiar with the program of termination of the mixed bloods from the Tribe? A. Yes, sir.

Q. And you were well acquainted with that-- A. I had not been in the organization for--since 1954. So I have had very little to do with the problems of the agency.

Q. Well, on March 31 of 1954, there was a meeting of the Tribe, wasn't there? A. '54, you say?

Q. Yes. Did you attend that meeting? A. That's a termination meeting?

Q. That's right. And were you there? A. I think so.

Q. At that meeting there was a vote taken about the termination, wasn't there? A. Yes, sir.

Q. And the question of termination was discussed at that meeting, wasn't it? A. Yes, sir.

Q. Now, you were present at that time? A. Yes, sir.

Q. And you were aware of what they were talking about

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when they were talking about termination, weren't you? A. Some of the things.

Q. Well, you still are, aren't you?

(Witness laughs.)

Q. Well, Mr. Curry, there was a vote taken at that meeting, wasn't there? A. Yes, sir.

Q. And a vote was taken in favor of the termination, wasn't it? A. Yes, sir.

Q. In fact, it was a rather strong majority in favor, wasn't it? A. Yes, sir.

Q. Now, after this termination vote was taken, some legislation was introduced into Congress, wasn't it? A. I think so.

Q. You were familiar with that legislation, weren't you? What was your answer? A. Yes, sir.

Q. You were fully aware of the purpose of the legislation, weren't you? A. Yes, sir.

Q. Were you also aware of some of the steps that would be taken in that termination? A. Well, like I say, I was out of the organization operation

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at the time. I terminated--I retired in my work 1954, and I had no longer had any reason to be taking any part, only if I wanted to take a favorable--wanted to attend the meetings. I did not belong to any organization up to 1954.

Q. So any interest you had, that was just simply a personal thing? A. Yes, sir.

Q. Were you involved in the division of the assets of the Tribe? A. In favor, you say?

Q. Were you involved in it? Did you have anything to do with it? A. No.

Q. Now, I think you've testified that you signed certain affidavits that are in here? A. Yes, sir.

Q. Now, is it your testimony that these affidavits were blank at the time that you signed them? A. Some of them.

Q. Did you make any objection to the fact that you were

signing a blank affidavit? A. No, sir, I did not.

Q. You were aware, were you not, that you had posted these for \$700 a share? A. I did not post it for \$700.

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Q. How much-- A. They were blank. Those that you are mentioning.

Q. How much did you post the shares for? A. They were not posted, only that 35--the one that Mr. Zollar--others were not posted.

Q. All right. When you posted the shares for \$3,500, how many shares did you put in that document? How many were you offering to sell? A. Five shares.

Q. And that was for \$3,500? A. Yes.

Q. And you were aware of the amount, were you not? A. Yes, sir.

Q. How much was that per share? \$700, isn't it? A. Yes, sir.

Q. All right. Then when you sold those shares, you sold them, some of them, for \$400? A. Yes, sir.

Q. Well, now, did you know that you were supposed to sell them for \$700? A. There was no--no stipulation. Anyway, we had to sell them for what we ever advertised it for.

Q. Well, you did receive the notification, didn't you? A. Yes, sir.

Q. Doesn't it say in there, that you should?

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A. Why wasn't it the responsibility of this man to watch to see that we were protected?

Q. Well, Mr. Curry, let me ask the questions, will you please? A. Okay.

Q. Now, you didn't post the other five shares for sale, did you? A. No.

Q. Those sales were made after August 27 of 1964, weren't they? A. I don't quite recall, but--I don't remember.

Q. Now, Mr. Curry, does the date August 27, 1961, have any meaning to you? A. In what way?

Q. In connection with this termination. A. Maybe and maybe not.

Q. Well, did any change in your particular relationship with the tribe occur at that time?

MR. NIELSON: Well, your Honor, I'm going to object to is as calling for a legal conclusion. That's the question the Court is to decide in this case.

THE COURT: It may be understood as asking, "Were you aware of any change as of that date?"

THE WITNESS: It would have made no difference. My feeling, if the legislation act has done that, what

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would it make to me that would be my feeling one way or the other?

THE COURT: Mr. Curry, the question was, were you aware of any significance to that date, and if so, what was your understanding of it?

THE WITNESS: Well, I don't know.

Q. (By Mr. Klemm) Well-- A. Put it in different light, different meaning.

Q. Well, let me ask you this. As far as your understanding is concerned, when did the termination of the mixed bloods take place?

MR. NIELSON: Same objection, your Honor.

THE WITNESS: When did they, you say?

THE COURT: Same ruling.

THE WITNESS: August 21--August 27, 1961.

Q. (By Mr. Klemm) And at that time, there were many things that were changed, weren't there? A. Supposed to have had.

Q. Well, did you have any hunting and fishing rights on the reservation after that time? A. I don't know what you mean by that. We have hunting rights, and we have it, and we don't have it.

Q. Well, did that hunting right change as you understood it on August 27, 1961? A. Well, I don't know. I've mentioned that I haven't

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taken any part in any of the organizations' function.

Q. Now, Mr. Curry, when you made those sales for \$400 a share, you were satisfied with that, weren't you? A. Maybe.

Q. Well, look, on each occasion, Mr. Curry, you went to the buyer with your stock, didn't you? A. Not necessarily have to go to them. They might come to me.

Q. Well, in which case did they come to you? A. Not this--one of them I went to them--the party offered it.

Q. Well, in the sale to Mr. Chasely, you owed him a bill, didn't you? A. Yes, sir.

Q. And it was quite a bit of money, wasn't it? A. Oh, not too much.

Q. How much was it? A. It was less than \$400.

Q. And you wanted to pay that bill, didn't you? A. He wanted me to settle that way.

Q. And you gave him the stock for the bill? A. Yes.

Q. You did that with Mr. Swain, too, didn't you? A. Yes, sir.

Q. How about the others? Mr. Bastian?

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A. No. I had no obligation with him.

Q. Well, did you go to him to sell him the stock? A. Yes.

Q. And you approached him on the stock, didn't you? A. I think some of them.

Q. Now, how about the other sales? A. I don't quite recall; but anyway, they was buyers here and there, and they come to us, and we went to them.

Q. Well, when you made the sales of your stock, you were willing to do so, weren't you? A. Well, it depend on why, and reasons for that.

Q. Well, there was no one forcing you to sell the stock, was there? A. No one not forcing us, either.

Q. What you're saying is circumstances may have forced you to do so? A. Yes.

Q. Your needs for money? A. Yes.

Q. Is that correct? A. Yes.

Q. But there were no people forcing you, were there? A. No, unless it's the money.

MR. KLEMM: That's all I have, your Honor.

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CROSS-EXAMINATION BY MR. BERTOCH

Q. Mr. Curry, did you own or operate a store in Ouray for a while? A. No.

Q. You didn't. A. In the early days that was my father.

Q. That was your father's store? A. Yes.

Q. I see. Did you ever work in it and help him out?

A. No. I was a small boy. I was away to school.

Q. Mr. Curry, I'm going to show you a stock certificate which is part of Exhibit 9-A; and this stock certificate says, "Oran F. Curry," on the front of it, and this one is numbered 881. Will you tell me if that's your signature on the back of that? A. Yes, sir, it is.

Q. And that's dated 10/23/64; is that right? A. It must be.

Q. That would be October 23, '64. Is that correct? Can you read that? A. Yes, sir.

Q. Did you write that in, do you recall, that date? A. I can't say.

Q. All right. You would assume that's about the time when

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you transferred or you endorsed that share of stock; is that right? A. Yes.

MR. BERTOCH: May the record show, your Honor, that I still renew and retain my objection with regard to transfers after August 27, 1964; but I want to, since the Court has not, at least as yet, entertained that--

THE COURT: Well, I've concluded by reviewing the file as far as I can that the objection is not well taken, that the pretrial order contains no such limitation and should not be treated as containing that limitation; and if there is anything in the pleadings which would indicate any limitation, the pleadings, which is the complaint, may be amended. So that you know just exactly what you have to meet. And if that should work any surprise, which in view of the record I don't think it will; of course we can give you such time as may be necessary.

MR. BERTOCH: All right, your Honor. Just for the record, I will have my continuing objection, then, to any evidence with regard to sales after August 27, 1964, except for the purpose of showing the market value of the stock.

THE COURT: Yes. And the objection is overruled.

Q. (By Mr. Bertoch) Then, of course, you saw this stock certificate, which is part of 9-A, numbered 881, the stock certificate itself. That's correct, isn't it? You saw it,

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because you signed it, of course you saw it; is that correct? (Witness nods head in the affirmative.)

Q. Did you at that time read the warning in red on the front of it? A. No, sir.

Q. Beg pardon? A. No, sir.

Q. You don't recall reading that? A. Yes, I can.

Q. Do you recall reading that at that time? A. No.

Q. Do you recall when you had this certificate in your possession, do you recall if you read the notice of restriction on transfer which is printed on the certificate? A. I guess I would if it was in my possession.

Q. Well, of course, it was in your possession at least long enough, for you to sign it; is that right? A. Yes.

Q. All right.. And I show you another part, or another document, that is part of Exhibit 9-A, and this is a stock certificate numbered 972; and is that your signature on the reverse side of it? A. Yes, sir.

Q. That is dated December 4, 1964; is that correct? A. Yes, sir.

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Q. That's the date you signed it, if this date on the endorsement is correct; is that right? A. Yes, sir.

Q. And so you had an opportunity to see that certificate? Is that correct? Do you recall whether--answer out loud, so he can get it. A. Uh huh.

Q. All right. Do you recall whether or not you read the warning on the front of that one, or the notice of restriction on transfer on the back? Do you remember whether you read those or not at that time? A. No, I don't.

Q. All right. Did you want a drink? A. No.

Q. I show you another document from Exhibit 9-A, and this is a stock certificate in the Ute Distribution Corporation, No. 881; and on the reverse side is that your signature? A. Yes, sir.

Q. I think that's the one I just showed you, Mr. Curry. So I'll show you a final one here. This one is a document from Exhibit 95, and it's No. 1023, Ute Distribution Corporation. Is that your signature on the back of that one? A. Yes, sir.

Q. And that's dated January 4, 1965. Is that true? A. That's what it says.

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Q. All right. Now, with those, of course, you didn't have to post, is that correct? You didn't have to post these when you sold this stock, is that correct, because this was after August 27, 1964? A. Yes.

Q. Right? A. Yes.

Q. Now, the one, the certificate numbered 881, is for

3 shares; is that right? A. Yes, sir.

Q. And the one numbered 972 is for 2 shares; is that correct? A. Yes, sir.

Q. And one marked 1023 is for one share; is that correct? A. Yes, sir.

Q. These certificates represent 6 shares; is that right? A. Yes.

Q. And on these, you didn't have to post with the Government, and you didn't have to sign any affidavit; isn't that true? Is that true? A. I guess not. Nobody else was doing it.

Q. All right. As far as you knew, with regard to these that you sold after the 27th of August 1964, you could sell at any price you wanted; is that right? A. I don't know.

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Q. You don't know about that? A. No.

Q. All right. Now, in connection with your sales of your Ute Distribution Corporation stock, Mr. Curry, do you have any complaint against the First Security Bank? A. Not as a business organization.

Q. All right. A. Just the people whom I was dealing with.

Q. All right. Whom were you dealing with in First Security Bank that you have a complaint against? A. I haven't any.

Q. You haven't any? A. No, sir.

Q. You had no complaint against John Gale; is that right? A. No, sir.

Q. And you had no complaint against Verl Haslem? A. No. I had no dealings with Verl Haslem.

Q. All right. And you sold your first share of stock that you sold to Mr. Chasel? A. Yes, sir.

Q. Did you sue him? A. Did I what?

Q. Did you sue Mr. Chasel in connection with that stock? A. Chasel, you say?

Q. Yes.

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A. Yes, sir.

Q. Did you bring a lawsuit against him? A. Well, I did with the--what's taking place.

MR. BERTOCH: Perhaps we can stipulate. Was Mr. Chasel a defendant in this lawsuit?

MR. NIELSON: We can stipulate that he is not a defendant in this lawsuit, and to my knowledge he has not been sued.

At least, we haven't done it.

THE COURT: All right. In the absence of a showing to the contrary, he has not been sued.

MR. BERTOCH: And we can stipulate Mr. Swain was not a defendant in this lawsuit?

MR. NIELSON: So stipulate.

MR. BERTOCH: That's all.

CROSS-EXAMINATION BY MR. PAULSON

Q. Mr. Curry, is it true you had no dealings with Nick Murray? A. Dick Murray?

Q. G. Richard Murray, this man here? A. No.

Q. You had no dealings with him; is that correct? A. No.

MR. PAULSON: That's all.

THE COURT: Did you have any dealings with Dick--

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Nick Murray?

THE WITNESS: Dick? This here man here?

THE COURT: Richard Murray?

THE WITNESS: No.

THE COURT: All right.

REDIRECT EXAMINATION BY MR. NIELSON

Q. Mr. Curry, Mr. Bertoch has shown you some stock certificates and asked you some questions about them. I'd like to go over those stock certificates for a moment here with you. The first one that he showed you is No. 881, and it says that you are the owner of 3 shares of stock. Right? A. Yes.

Q. That's what it says, isn't it? A. Yes.

Q. And on the back of it it says that you sold one share of stock to Dick Bastian? A. Dick Bastian.

Q. So after you sold one share of stock out of the 3, you had 2 left; isn't that right? A. Yes, sir.

Q. Now, the next certificate is No. 972, and it's for 2 shares, isn't it? A. Yes, sir.

Q. Now, is that the stock certificate that you received

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from the bank after you sold one share to Mr. Bastian and sent the old certificate in? A. I think so.

Q. All right. On the back of that one it says that you're selling one share to Dick Bastian; and after you subtract one share from the two, you've got one left? A. Yes.

Q. And the next certificate is 1023, and it's for one share? A. Yes.

Q. Is that the stock certificate that you got back from the bank after you sent in this other one, 972, transferring one share? A. Yes.

Q. So in fact, these 3 stock certificates don't represent 6 shares, they represent 3 shares, don't they? A. I don't know.

MR. BERTOCH: I will so stipulate, Parker.

Q. (By Mr. Nielson) All right. Now, Mr. Bertoch asked you if you saw the stock certificate, and I believe you answered that you did; and he asked you about the warning that's printed on the front of it. I'll ask you, Mr. Curry, if you know what "unadjudicated and unliquidated claims against the United States" are. Do you know what they are? A. No.

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Q. Do you know what "assets not susceptible to practical or equitable distribution" are? A. No, sir.

Q. Did anyone ever tell you what they were before you sold your stock? A. No.

Q. Did anyone ever tell you that you shouldn't sell your stock? A. No.

Q. This first stock certificate, No. 881, on the back of it it recites that it was signed in the presence of Mr. Verl Haslem. Did Mr. Verl Haslem tell you you shouldn't sell the stock? A. No.

MR. BERTOCH: I object to that, your Honor, as irrelevant.

THE WITNESS: I've never had any dealings with him, Verl Haslem.

Q. (By Mr. Nielson) Did you go in front of Mr. Verl Haslem when you signed that certificate? A. I don't think so.

THE COURT: The answer may stand.

Q (By Mr. Nielson) All right. The next one in the lower left-hand corner bears the signature, "Signed in the presence of Verl Haslem." Did you go before Mr. Verl Haslem when

you signed that one? A. No.

Q. And the third one also says that it was signed in the presence of Mr. Verl Haslem. Did you see Mr. Verl Haslem when you signed that? A. No.

Q. Aside from the stock that you acquired in these corporations set up as part of the termination law, have you ever owned any other stock? A. No, sir.

Q. Do you know what stock dividends are? A. Yes and no.

Q. Well, I take it you have a general idea what they are, at least? A. Yes.

Q. All right. Do you know what minerals are contained in the Uintah and Ouray Reservation? A. Know of them.

Q. Which ones do you know of? A. Minerals, you say?

Q. Yes. A. Gas and oil.

Q. Gas and oil. Anything else? A. No. I don't know.

Q. How about dawsonite? Do you know what dawsonite is?

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A. No, sir, I don't.

Q. Do you know what trona is? A. No.

Q. Now, Mr. Bertoch asked you some questions and referred to the date August 27, 1964. Does that date have any significance to you, Mr. Curry? A. No.

Q. Was there anything you know of that happened on August 27, 1964? A. No.

Q. Do you know when the termination date was under Public Law 671? A. Yes, sir.

Q. When was it? A. August 27, 1961.

Q. '61? Did you understand, Mr. Curry, that prior to August 27, 1964, it was necessary to offer your stock for sale with the superintendent of the Uintah and Ouray Reservation? Did you know that? A. I don't--not at that time.

Q. Do you know that now? A. Yes.

Q. Do you have any understanding as to what the reason for that was? A. No, sir, I don't.

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Q. You don't know at all why that was? A. No.

Q. Mr. Curry, if you knew or had reason to believe that you didn't receive a fair value for your stock, would you be upset about that? A. Oh, I would have been upset, but I've been aware of it.

Q. You have been aware of that? A. Yes, sir.

Q. And are you mad, so to speak, about the people that may have cheated you about that stock? A. No, I'm not.

Q. You're not mad at them? A. No.

Q. Do you intend to sue them in this lawsuit to get your money? A. Oh, could.

Q. What? A. I could, and still wouldn't be made at them.

MR. NIELSON: All right. Thank you.

THE COURT: Sir, you knew, I suppose, that this stock was worth something?

THE WITNESS: Yes, sir.

THE COURT: Why did you think it was worth something?

THE WITNESS: Yes, sir.

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THE COURT: Why did you think it was worth something?

THE WITNESS: Oh. Well, different people seemed to think that the value of their stock was worth more than what we were offering to sell it for. And other reasons.

THE COURT: I see. Did you know what the stock had behind it, so to speak?

THE WITNESS: No, I don't.

THE COURT: Did you know what property in a general way made up the property of the corporation, the Ute Distribution Company?

THE WITNESS: Yes.

THE COURT: What did you know about that?

THE WITNESS: The values of the property. Owning the property individually.

THE COURT: What property did the Ute Distribution

Company own?

THE WITNESS: Minerals, lands, and possibly future claim moneys that we had coming from the Government.

THE COURT: I see. And did you understand that the stock you owned represented some share of the corporation property in a general way?

THE WITNESS: Yes, sir.

THE COURT: I see. I have no other questions. Is there further inquiry?

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MR. BERTOCH: No questions, your Honor.

MR. NIELSON: I have just one question, if I may, your Honor.

THE COURT: All right.

RE-CROSS-EXAMINATION BY MR. NIELSON

Q. With reference to those stock certificates that we were looking at, prior to August 27, 1964, did you ever get a look at one of those stock certificates? A. I don't recall.

Q. Well, if we could direct your attention to the first one that you signed, or the one that at least bears the earliest date, 881, which has the date on the back of it October 23, 1964, prior to the time you got ahold of that stock certificate, had you ever seen one before? A. No, sir.

Q. And was that sometime close to the date on which you signed it, when you got ahold of that stock certificate? A. Yes.

Q. And after that time, had anyone ever read that warning that's printed in red on the-- A. No.

Q. They hadn't read that to you? A. I don't ever remember it being--I did I believe had a glance of one, but I don't believe it had that printing

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on it.

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GLEN REED called as a witness in his own behalf, being first duly sworn, testified as follows:

THE CLERK: State your full name, please.

THE WITNESS: Glen Reed.

DIRECT EXAMINATION BY MR. DUNCAN

Q. What's your mixed blood number? A. 534, I think.

Q. 354? A. Yes.

Q. What blood are you? A. Half.

Q. How old are you? A. I'm forty-seven.

Q. To whom did you sell your first five shares? A.

John B. Gale.

Q. Did you have any discussion with him about it? A. Yes. Call him on the telephone.

Q. What was said? A. I didn't exactly call him on the telephone. I went out to the bank and talked to him about it.

Q. What did you say, and what did he say? A. We had a little discussion about buying stock. And I asked him what they was giving, and he wouldn't tell me. But he said people was buying was giving \$1,750 for

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5 shares. So I told him I needed a little more. And he told me to go--to go see Nick Murray if I wanted to get more than that in trade, plus cash. I told him I didn't want a car, because I already had two then.

Q. Now, I ask you if you received this letter, Plaintiff's Exhibit 65-A. A. Yes, I did.

Q. On or about the date it bears? A. Yes.

Q. Will you read it to the Court? A. It says: "Glen Reed, 306 Redondo Avenue, Salt Lake City, Utah. Dear Glen:, I am enclosing an assignment for you to sign to file with the corporation in connection with your agreement to sell your stock to me. I would appreciate it if you would mail this back; and upon filing it with the corporation, I would then be able to advance you a little more money. Very truly yours, John B. Gale, Assistant Manager."

Q. Now, was there an instrument enclosed with that letter? A. Yes.

Q. Are you able to tell me which of these documents in the Exhibit 1-A, the letter you just read referred to? A. I believe the second one you have right here.

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Q. This second one? A. Yes.

Q. Which has the figure \$1,750 in it, and it's dated 10 August '64. There was an X on it. A. Yes.

Q. For your signature. Was that on it when you received it? A. Yes, that was.

Q. Were any of the other figures written in? A. Yes.

Q. You signed it in blank? A. Yes.

Q. And sent it to Gale? A. Yes.

Q. I also show you an instrument on the same date, 10 August 1964, Glen Reed, notarized by John B. Gale. Was that instrument filled in when you signed it? A. No.

Q. All the written part was blank? A. Yes, sir.

Q. I show you what has been marked your stock certificate dated--well, the original. Did you ever see that? A. No.

Q. You didn't sign it, of course? A. No.

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Q. Where did you next sell your stock? A. Well, it was on or around about August the 20th, '64.

Q. Who did you sell that to? A. Verl Haslem.

Q. Did you make the contact, or did he? A. He called me on the telephone.

Q. What did he say? A. Asked me if I wanted to sell my stock, and I told him no.

Q. What was that date? A. It was around about the first or middle part of August of '64.

Q. Did you contact him again, or did he contact you? A. He contacted me about four or five times during the week.

Q. How? A. By telephone.

Q. Long distance? A. Yes, sir, from Roosevelt.

Q. What did he tell you, if anything, about your stock? A. He just asked me, kept asking if I wanted to sell, and I told him no. I finally give him a price for \$3,000. He said no, that he couldn't pay that much, they wasn't paying that. So we told him no at the time, and he turned around and called me back the next day again. And I finally

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give in to him.

Q. And you sold the last five shares to him? A. Yes.

Q. I show you your stock certificate in your name, No. 844. Is that your signature on the back? A. Yes.

Q. Glen V. Reed? A. Yes.

Q. Was anything typed on there when you signed it? A. I couldn't tell you, because it was--he handed to me about 9:30 or 1 o'clock that night out at Heber City in the middle of the road.

Q. Where were you? A. In Heber on the highway.

Q. You were outside? A. Yes, sir.

Q. What did you use to sign it on? A. On top of the hood of a car.

Q. It was too dark to read it? A. Yes.

Q. Did either Mr. Gale or Mr. Haslem ever tell you not to sell your stock? A. No.

Q. Did they ever advise you not to sell your stock? A. No.

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Q. Did you understand when you sold these two 5-share blocks, the assets-- A. No.

Q. --underlying the company? A. No.

Q. Did you know what "unadjudicated and unliquidated claims against the United States" meant? A. No.

Q. Did you understand what "assets not susceptible to practical distribution" meant? A. No.

Q. It had been sometime before that since you had a distribution, too, hadn't it for capital payment? A. Yes, quite a while.

* * * * *

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CROSS-EXAMINATION BY MR. KLEMM

Q. Mr. Reed, you're a high school graduate, aren't you?
A. Yes. Sometime back.

Q. What high school? A. Sherman Institute.

Q. Where is that located? A. Riverside, California.

Q. You're also a veteran, aren't you? A. Yes. One year.

Q. You were in the United States Army? A. Yes.

Q. And you received an honorable discharge, didn't you? A. Yes.

Q. Now, in this particular case you were acquainted and you were aware, were you not, that you had to receive the amount that you offered it for to the Tribe, isn't that correct?

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A. No. Not necessarily. No.

Q. You didn't know that? As a matter of fact, you went to Mr. Gale to sell your stock, didn't you? A. Yes.

Q. You went in to see him because you wanted to get some money; isn't that correct? A. Right.

Q. You were willing at that time to sell your stock?

A. I was for what I wanted for it, but I couldn't get that much, so I had to take what I could get.

Q. All right. How much did you take? A. Took \$1,750, what he told me.

Q. Well, that's all you posted it for, wasn't it? A. That's what he told me to post it for.

Q. You posted it for \$1,750, and that's what you got, isn't it? A. Yes, by the suggestion of Mr. Gale.

Q. Well, you didn't answer the question. That's what you posted it for-- A. Yes.

Q. --and that's what you got; isn't that correct? A. Yes.

Q. Now, when you signed that affidavit, did I understand you to say that it was blank at that time? A. That's right.

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Q. You didn't object to signing an affidavit in blank, did you? A. Well, I had a little doubt about it, but there was nothing to do. He said, "Sign it," so I signed it.

Q. But you didn't object to him about that, did you? A. No.

Q. And you never posted the other five shares, did you? A. No.

Q. Ever posted those for sale? When did Mr. Haslem first contact you about buying your shares? A. It was somewhere along about the 10th, between the 10th and 15th of August.

Q. How long was it from the time that he first contacted you until you signed that stock certificate in the dark on the highway? A. It was about a week after.

Q. A week after? A. Or a little over.

Q. At that time? A. Yes.

Q. Now, Mr. Reed, what did you think that your stock represented? A. I don't know.

Q. Well, you knew you had ten shares of stock in the Ute Distribution Corporation, didn't you?

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A. Yes.

Q. And you knew that it represented something that came out of the termination; isn't that correct? A. Right.

Q. And you knew that you were being terminated, too, didn't you? You were fully aware of this procedure, weren't you? A. Well, I heard rumors about it, yes.

Q. Did you ever attend any of the meetings out there? A. No.

Q. But you knew that this was occurring at that time?

A. Yes. In a way, yes.

Q. Then you found out you had ten shares of stock in the Ute Distribution Corporation. Did anybody ever tell you what that was for? A. No.

Q. Didn't you know what it was for? A. Money.

Q. All right. A. If it ever come in.

Q. What kind of money? A. I don't know. Per capita payments. But I never did see none.

Q. All right. You knew that those shares of stock represented some per capita payments, didn't you?

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A. Yes.

Q. And you were fully aware of that, and you expected some money from that stock, didn't you? A. Yes.

Q. All right. You knew that the stock also represented some interests in the reservation, didn't you? A. Yes.

Q. You knew that the stock represented your interest in that corporation. Did you know what the corporation had as its assets? A. No.

Q. Now, Mr. Reed, I show you your signature on your stock certificate that is part of Plaintiffs' Exhibit 1-A and ask you if that is your signature on there? A. Yes, sir, that's it.

Q. I note on here that the date is noted as September 4, 1964. Did you sign that instrument on or about that date?

A. It was about--around right after the 20th of August '64 is when I signed that certificate.

Q. It is your testimony that is not the date you signed the certificate? A. No, sir. That's right.

Q. How long was it from the time that you sold the first five shares until you sold the last five shares? A. Oh--well, I finished the deal with John B. Gale about--

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somewhere between--in the first week of August of '64.

Q. So how long was it? A. Oh, right around three weeks, a couple of weeks.

MR. KLEMM: That's all.

CROSS-EXAMINATION BY MR. PAULSON

Q. Mr. Reed, you said that Mr. Gale told you that if you'd go over to Nick Murray, maybe he'd give you a higher price for your stock? A. That's correct.

Q. Did you in fact go to Nick Murray? A. No.
Q. Is it true that you had no dealings whatsoever with G. Richard Murray-- A. That's right.
Q. --with respect to the sale of any of your stock? A. That's right.

MR. PAULSON: That's all.

CROSS-EXAMINATION BY MR. BERTOCH

Q. Mr. Reed, Mr. Gale paid you cash for the stock you sold him; is that right? A. Over a certain length of time, yes.
Q. And \$350 a share; is that right? A. I think that's what it added up to, yes.

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Q. So you got \$1,750 altogether for the five shares; is that right? A. Yes.
Q. At the time you got that, were you happy to get that money? A. Yes.
Q. All right. Now, the stock you sold to Verl Haslem was five shares? Right? A. Right.
Q. And he paid you \$400 a share, is that right? A. I don't know whether it was \$400, but he give me \$2,000 cash.
Q. For five shares? A. Yes, sir.
Q. Would that be \$400 a share? A. Yes.
Q. All right. Were you satisfied with that deal at that time? A. Well, I wasn't satisfied, or I would have sold it to him when he first started called me.
Q. All right. Did you think, at the time you sold stock to Mr. Haslem and Mr. Gale, did you think this stock had some value? A. No.
Q. You didn't think it had any value at all? Well then,

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you must have been quite happy to get \$2,000 for stock you thought had no value, weren't you? A. Well, I wasn't happy, but I had to take what I could get.

Q. What did you think it was worth at that time? Nothing? A. I didn't know.

Q. You didn't know? A. No.

Q. All right. Do you recall when I took your deposition over by the new Federal Building in Salt Lake in June of 1966? A. Yes.

Q. Deposition page 14, reading from line 9. I'm going to read some questions and answers. This is your deposition and

purportedly what you said at that time, and then I'll ask you if you said it. "Question: And at the time you got \$2,000 from Verl Haslem, were you happy to get it? "Answer: I wasn't happy, no. "Question: Why did you take it? "Answer: Because he kept hounding me all the time. "Question: You mean you offered to sell these five shares of stock just to get somebody off your back?

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"Answer: That is right. "Question: You didn't think they were worth much, did you? "Answer: I think they were worth \$5,000. That is what I asked to start out with." Now, were those questions asked of you, and did you answer them? A. Yes, I did.

Q. All right. You started out by asking \$5,000 for the ten shares of stock? A. Yes.

Q. So you thought they were worth \$500 a share, is that right? A. Yes.

Q. But in spite of that, you sold five for \$350 a share, to Gale Haslem--or, to John Gale, and five to Verl Haslem for \$400 a share; is that right? A. Right.

Q. Now, were you living in Heber at that time? A. No.

Q. About what was the date that Verl came over and paid you the \$2,000 and had you sign the stock certificate? A. Around about the last part of August.

Q. The last part-- A. I can't tell exactly the date, but it was the last

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part of August.

* * * *

Q. (By Mr. Bertoch) I show you what has been marked Defendants' Exhibit F-R and ask you if you can identify that for me? A. Yes.

Q. What is it? A. It's a receipt for \$2,000.

Q. And is that your signature on it? A. Yes. But there wasn't nothing on that wrote up there when I signed it.

Q. But that is your signature, is that right? A. Yes, right.

Q. Did Verl give you \$2,000 at that time? A. Yes, he did.

Q. Was that date on there? A. That's wrong.

Q. Well, you said it was about the last of August, didn't you? A. Yes, but it wasn't that way.

Q. How do you know it wasn't August 30? A. It was right after Sun Dance, and Sun Dance quit on

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the 22nd day of August.

Q. All right. Now, think back. Why were you in Heber at that time? A. Because he called me and told me to meet him there.

Q. You say Verl Haslem is a liar if he put that date on there? A. Yes, sir.

Q. That is your signature on it; is that right? A. Yes.

Q. And you made no attempt to read what was on there? A. Because there wasn't nothing on there, only where it says, "Received," and, "Dollars." There wasn't nothing wrote in.

* * * *

Q. (By Mr. Bertoch) Now, if you thought the stock was worth \$500 a share, why did you take \$400 from Verl Haslem? A. I think I answered that question once before. To get him off my back.

Q. To get him off your back? A. Yes.

Q. I see. It wasn't the money you were interested in;

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is that right? A. No.

Q. Would you have sold it to him for \$1,000 in order to get him off your back? A. I probably would, yes.

Q. Probably would. A. Anybody could get rid of him.

Q. Would you have given them away to him to get him off your back? A. Oh, I wouldn't go so far as to do that, no.

Q. Oh. Would you have taken \$900 to get him off your back? A. No, I don't think so.

Q. You think it would have taken at least \$1,000, is that right? A. Yes.

* * * *

THE COURT: Thank you sir.

MR. NIELSON: We'll call Charles T. Reed.

CHARLES R. REED called as a witness in his own behalf, being first duly sworn, testified as follows:

THE CLERK: Please state your name.

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THE WITNESS: Charles T. Reed.

DIRECT EXAMINATION BY MR. NIELSON

Q. Mr. Reed, where do you live? A. At Fort Duchesne.

Q. Are you a member of the mixed blood group of the Uintah and Ouray Reservation? A. I am.

Q. And your mixed blood number is 353? A. That's right.

Q. Mr. Reed, did you receive ten shares of stock in the Ute Distribution Corporation? A. I did.

Q. How did you learn that you had ten shares of stock? A. They told us about it.

Q. Who told you about it? A. Oh, I heard it.

Q. Well, can you remember where you heard it or how you heard it? A. Yes. When they was--before they was terminated, they told us.

Q. Was it at some meeting? A. Yes.

Q. All right. Mr. Reed, I'm going to show you a file which is marked Plaintiffs' Exhibit 12-A which contains just

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one document in it. It's a stock certificate bearing No. 353, and your name for ten shares, and on the back of it it has what purports to be your signature. Is that your signature? A. Yes, it is.

Q. And it has the date October 5, 1964; it recites that you're selling ten shares of stock to Benjamin T. Shaw Trust dated December 20, 1963, Dixon Illinois. Do you know who the Benjamin T. Shaw Trust is? A. No, I don't.

Q. Have you ever heard of the Benjamin Shaw Trust before? A. No, sir.

Q. Have you ever been to Dixon, Illinois? A. No, I haven't.

Q. When was the first time you saw this stock certificate--let me withdraw that question and ask you this. At some time before the date October 5, 1964, did you have a conversation with anyone about the sale of your stock? A. Yes, sir. I did.

Q. Who was it? A. Richard Murray.

Q. Nick Murray? A. Yes.

Q. Will you tell where that conversation took place? A. Yes. Over to my home.

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Q. What day was that, do you remember? A. I think it was--well, the first time when he come over was in January.

Q. January of what year? A. Of 1954--'64.

Q. '64? And did you agree to sell him your stock at that time? A. Yes, I did.

Q. In January of 1964? A. Yes, sir.

Q. Did Mr. Murray pay you any money at that time? A. Yes. He paid, I think it was \$50. Then I went down and posted it.

Q. Where did you go to post it? A. Down to Fort Duchesne.

Q. At the time Mr. Murray gave you the \$50, did you have any discussion about the necessity of posting the stock? A. No.

Q. But you knew that it had to be posted? A. Yes. And about--it had to be posted for six months. And they came back, and they told me at that time that it was in trust for the First Security Bank.

Q. Who told you that? A. Mrs. Logan.

Q. Mrs. Logan told you it was in trust?

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A. Yes..

Q. Now, did you have a conversation with Mr. Murray later on about the stock? A. Yes, I did.

Q. Tell me, when was that? A. That was about, somewhere in the middle or the first of August.

Q. Of what year? A. 1964.

Q. Tell me what happened then. A. Then we agreed to come out and see about it.

Q. Well, tell me what was said between the two of you. A. Well, he said that he would help me get my stock out.

Q. Get it out of where? A. Out of the bank, if I would sell it to him.

Q. In Salt Lake City? A. Yes.

Q. All right. Did you come to Salt Lake City to get your stock? A. Yes, I came to Salt Lake three times to get it.

Q. Tell me what happened when you came to Salt Lake City. A. Well, the first time I came to Salt Lake City, they told us that--

Q. Now, you say they told you. Who told you? A. Well, he did.

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Q. Who is "he," Mr. Reed? A. Nick Murray.

Q. Nick Murray told you what? A. He said that he would get me a lawyer out here, recommend a lawyer, to help me get it.

Q. Did he recommend a lawyer? A. Yes, he did.

Q. Who was it? A. I think it was Mr. Brown or something like that.

Q. All right. Did the lawyer get your stock for you? A. Yes, about two weeks later.

Q. Do you recall what date that would have been? A. No, I don't.

Q. Well, was it after August 27, 1964? A. I think something like that. It took that long to get it, I think.

Q. And after you got the stock, then did you then endorse the stock certificate as the exhibit indicates that it was endorsed, by you? Did you sign your name on it? A. Yes, sir.

Q. Where were you when you signed your name on the stock certificate? A. At Nick's garage.

Q. In Roosevelt? A. In Roosevelt.

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Q. Did you ever go down and see Mr. Gale? A. No, sir.

Q. Did anyone place you under oath when you signed the stock certificate? A. No, sir. No one. I asked him if I had to go down, and he said he'd fix it.

Q. Mr. Murray said he'd fix it. A. Yes, he did.

Q. I call your attention to the stock certificate in your file. In the lower left-hand corner it bears the signature of John B. Gale, and above that it says, "in the presence of." A. No, sir, I never have seen him.

MR. NIELSON: Your Honor, that's all the questions I have of this witness. I would like to offer Exhibit 12-B, which is his social worker's file, as against the United States only, for the purpose I previously indicated.

THE COURT: For that limited purpose it is received, against the United States.

(Plaintiffs' Exhibit 12-B received in evidence.)

MR. NIELSON: In this case, your Honor, I would like to read a few things from the social worker's file, if I may.

THE COURT: You may.

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(Whereupon, Mr. Nielson read aloud from the file.)

MR. NIELSON: You may cross-examine.

MR. KLEMM: I would call the Court's attention to Plaintiffs' Exhibit B which has been received into evidence. Schedule A, the last page, shows Mr. Charles T. Reed as being under the trust that was set up at the First Security Bank in

connection with this matter.

CROSS-EXAMINATION BY MR. KLEMM

Q. As a matter of fact, Mr. Reed, you were placed under that trust, weren't you? A. I guess so. I was there.

Q. So when you first talked about selling your stock with Mr. Murray, you went out to the Indian Affairs there, the Bureau of Indian Affairs at Fort Duchesne, didn't you? A. That's right. That's where I posted it.

Q. Mrs. Logan very carefully explained to you, didn't she, that you couldn't post your stock, that you couldn't sell your stock; isn't that correct? A. Well, they wrote me a letter.

Q. Do you have that letter with you? A. No, I haven't.

Q. Do you have it somewhere in your files? A. I guess I could find it if I went back home.

Q. But they wrote you a letter, and in that letter they

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told you that you couldn't sell your stock; isn't that correct? A. I guess it was something like that.

Q. Did they tell you why you couldn't sell your stock?

A. No, they didn't. All they said, it was in trust.

Q. But you were fully aware at that time you were under a trust provision, is that correct? A. Yes, sir.

Q. Contrary to that, you still tried to sell your stock, didn't you? A. No. He came to me. I didn't go to him.

Q. All right. He came to you, then. And he talked to you about selling it, and you were willing to sell it, weren't you? A. Well, in a way I did, and it a way I didn't.

Q. You wanted the money, didn't you? A. No, I--

Q. No? A. Well, I'll tell you about it. The way I got mixed up in this, he brought a car over there and traded me a car. He said he'd ~~give~~ gave me, I think it was, a '64 Chev station wagon for five shares. And I agreed. That's what I agreed to.

Q. Did you have any money at that time? A. No, I didn't. Well, I had some money to live on, yes.

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Q. Well, how did you expect to pay for the car? A. Well, I didn't know it was going to cost that much money.

Q. Well, how did you expect to pay for it? A. Well, I could have--I was working.

Q. You expected to pay cash for the car? A. Well, payments, like all the rest is.

Q. But you never did actually post that stock, did you? A. Yes, I did.

Q. Well, did you ever see it in any of the post offices?
A. No, I didn't.

Q. You just took it over to sell out to the Bureau of Indian Affairs, didn't you? A. No, I didn't.

Q. Well, what did you do with it? A. Well, I guess I sold it to Nick Murray.

Q. No. I mean the offer to sell. A. Well, I posted it, yes. I posted it.

Q. Who did you give it to? A. Well, it was posted down at Fort Duchesne. I turned it in.

Q. Did they return that to you when you wrote the letter? A. No, they didn't.

Q. Now, I think you said you went to a meeting where they told you about your ten shares of stock. When did that

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meeting take place? A. They used to have a lot of meetings out there.

Q. The Affiliated Utes used to have a lot of meetings?
A. Yes.

Q. And they used to talk about the termination, didn't they? A. Yes.

Q. And part of that termination was a corporation called Ute Distribution Corporation, wasn't it? A. Yes.

Q. And they used to talk about the stock of that corporation, didn't they? A. Yes, they talked about it.

Q. And they told you what that corporation would represent, didn't they? A. In a way, yes.

Q. Mr. John Boyden used to be present at those meetings, didn't he? A. Some of the times, yes.

Q. And he used to explain to you about the value of your stock, didn't he? A. Well, not when I was there, he was never talking about it.

Q. All right. Are you acquainted with Mr. George Morris? A. No, I'm not.

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Q. Did you ever go to any of the meetings of the Ute Distribution Corporation? A. No.

Q. You went when they were called the Affiliated Utes; is that right? A. That's right.

Q. And Mr. Boyden was the attorney for the Affiliated Utes, wasn't he? A. No. He was for the Tribe, I think.

Q. Well, at least, he came to the meetings, didn't he?
A. Yes.

Q. And you used to talk about some of these things that had to do with the termination, didn't you? A. Yes.

Q. And you knew what "termination" was, didn't you?
A. Yes.

Q. And you knew what that stock represented, too, didn't you? A. Oh, a little.

Q. You knew it represented per capita payments; didn't you? A. Well, when we was to get them, yes.

Q. You knew it meant there were some claims against the Government, didn't you? A. No, I didn't at that time.

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Q. Well, where did you think the money was going to come from for the per capita payments? A. Other resources.

Q. So you knew the corporation had other resources, didn't you? A. Yes.

Q. You knew that that stock had some value, didn't you? A. Yes, I did.

Q. You knew other people were selling stock, too, didn't you? A. Yes.

Q. Now, Mr. Reed, when you went to those meetings did you have any trouble understanding the people? A. No, I don't think so.

Q. As a matter of fact, they used to give it to you in two languages there, didn't they? A. Yes, they did.

Q. At first they said it in English, and then somebody translated it into the Indian language, didn't they? A. Yes. That's how some of it is all mixed up.

Q. That may be true, but they did translate it; isn't that correct? A. Yes, yes. See, the only reason it's like that, see, most of my family is all full blood. And a lot of-- most all of these people, they don't go through there like I

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have to. And we talk mostly all Indian.

Q. And so you never had any trouble understanding? Either you could understand the English, or you could understand the translation, couldn't you? A. Yes.

MR. KLEMM: That's all.

CROSS-EXAMINATION BY MR. PAULSON

Q. Mr. Reed, you stated that your first conversation with Nick Murray was in January, at which time he paid you \$50?
A. Yes. Him and his dad.

Q. It was actually Clyde Murray who contacted you the

first time with respect to buying your stock, wasn't it? A. Yes.

Q. And your conversation at that time was with Clyde Murray? Correct? A. Well, both of them was talking.

Q. And it was Clyde Murray who gave you the \$50; isn't that correct? A. That could be.

Q. The first time you were actually contacted by Nick Murray on his own was in early August of 1964? A. That's right.

Q. Is this right? And Nick suggested or offered to help

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you find counsel, an attorney, in order to get the stock released? Is this right? A. No, he didn't. He wanted to give me a car.

Q. Well, after you found out that you couldn't get your stock released, didn't you say that he was the one who offered to get you an attorney? A. Yes.

Q. And you came in here to Salt Lake City, and you contacted an attorney, didn't you? A. Yes.

Q. And you went to this attorney with Mr. Murray? A. Yes, I did.

Q. Explain your circumstances to him? A. Yes.

Q. Who was the attorney? A. I don't know. It was Brown or something like that?

Q. Did Mr. Brown then act on your behalf with respect to this stock? A. Yes, he did.

Q. And the attorney then was finally successful in getting the stock released? A. That's right.

Q. In connection with that release, it was necessary to get a letter from your employer indicating that you were competent at the time? Is that right?

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A. That's right.

Q. You were working for a Mr. John Fausett at that time? A. That's right.

Q. A rancher? A. Yes, sir, that's right.

Q. And Mr. Fausett did in fact write a letter stating that you were competent? A. Yes, sir.

Q. After you did get your stock, you then completed your deal with Mr. Murray? A. That's right.

Q. Is it true, Mr. Reed, that you owed him a substantial debt at that time? A. No. After he had taken my ten shares, he said I owed him \$1,000.

Q. Didn't you owe him money before this? A. No, sir.

I think I had to give him back the \$50 that was paid in January. I had to give that back to his dad.

Q. What did you receive for your shares? A. Nothing. I was \$1,000 in the hole after I give it to him.

Q. Did you have a 1964 Chevrolet station wagon afterward that you didn't have before? A. No, I didn't. After he gave me the '64 station wagon, he also told me that I owed him \$1,000 more. That was

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\$3,500 that he had give me for my stocks. Then I owed him \$1,000 more.

Q. What did you do with the station wagon? A. I give it back to him.

Q. Right away? A. That's right.

Q. What did you actually get then? Nothing for the stock? A. Well, I got an old broken down '50--it was a Buick, old '50 Buick, and \$300 in cash.

Q. When did this take place? When did you get the Buick? A. Right after, about two weeks after he got the stocks--after I signed the stocks over to him.

Q. At the time you completed the transaction with Mr. Murray, didn't he give you some money? A. Well, he give me some money to come out here on.

Q. How much money? A. I think about \$200 altogether.

Q. Didn't he also transfer to you a 1964 station wagon at that time? A. No, he didn't.

Q. He did not? A. He gave me the car, but he never did transfer the title or anything else. We went back for the title, but he would not transfer the title. He said I owed him

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\$1,000.

Q. Did you in fact owe him money before you entered into this transaction? A. No, sir, I did not owe him nothing.

Q. Did you complain to Mr. Murray about this situation? A. Yes.

Q. Have you complained to him since? A. Yes. Still complaining. But it don't do any good.

Q. Aren't you still his customer, Mr. Reed? A. My wife is.

Q. You continued to do business with him up until this date? A. Yes. We have no hard feelings.

Q. I see. And it's your testimony that you did not receive a car other than this Buick that you described? A. Yes. We got another old '47 Ford. It was all broke down.

Q. That was a '58 Buick a minute ago? A. Yes. We

got a Ford and a Buick both.

Q. I see. And you got some money in addition to that?

A. \$300.

Q. Isn't it true that you were satisfied with the deal that you had made with Mr. Murray? A. Well, when we first started it. He told me that I only had to give him five shares. Then after, he took all

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ten shares.

Q. You say he took them. Did you sign a certificate?

A. That's right.

Q. Wasn't it your understanding that he was buying all of these shares? A. No, sir. Just five shares.

Q. When did you first learn that he was going to take all of them? A. When I signed the certificate.

Q. What did you do about it at that time, if anything?

A. I didn't do anything. I didn't think there was anything I could do about it.

Q. Well, you had an attorney in Salt Lake at that time, didn't you? A. That's the first time I ever seen the man.

Q. Hadn't you dealt with him some? A. No, I hadn't.

Q. But you had employed him for some purpose, is that right? A. What is that?

Q. To get the stock for you? Mr. Brown? A. Well, that's the first time I ever seen him.

Q. But did you have an attorney-client relationship with him at that time? Would this be correct? A. Well, just a temporary one.

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Q. But you did nothing about this deal with Nick? You were satisfied, weren't you? A. No, I wasn't satisfied, but there wasn't nothing I could do about it.

MR. PAULSON: That's all.

CROSS-EXAMINATION BY MR. BERTOCH

Q. Mr. Reed, in October of 1963 do you recall writing the First Security Bank and requesting to get five shares of stock so you could sell it? A. Yes, I think I was there.

Q. I show you what's been marked Exhibit F-T, and this is a letter dated October 10, 1963, and it's written to Tab C. George. Is that your signature on the letter? A. No, it isn't.

Q. Now, do you know who wrote that? A. No, I don't.

Q. Did your wife write it? A. I don't know.

Q. Will you read it and tell me whether or not you wrote it, or authorized that it be written? You can read part of it to yourself now. You don't need to read it out loud yet. A. Why don't you read it?

Q. I've read it. I want you to read it and for you to

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tell me whether or not you wrote that or authorized that it be sent to First Security Bank. A. I don't recall this letter, but maybe my wife wrote it.

Q. Your wife might have written it? A. Yes.

Q. Is that right? Are you married now? A. Yes. I've been married for 22 years.

Q. To the same wife? A. That's right.

Q. Good. So if your wife wrote it, it would be--what is her name? A. Marietta.

Q. Do you recall asking her to write something like that and request your five shares of stock because you needed it? A. Well, could have.

Q. Could have? All right. Let me show you--go ahead and look it up, Parker. Let me show you what has been marked Exhibit F-S, which purports to be a letter dated October 14, 1963, written to Ralph Cowan, First Security Bank of Utah, and signed, "Sincerely yours, Charles T. Reed." Is that your signature? A. No, it isn't.

Q. Would you read the first paragraph of that and see if that's something perhaps your wife wrote or you asked her

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to write? A. "I'm writing in regards to a telephone call--"

MR. NIELSON: Just read it to yourself.

Q. (By Mr. Bertoch) Read it to yourself, and then tell us whether or not that's the letter that your wife wrote, if you know.

(Witness examines.)

Q. That's probably a letter your wife wrote? A. Yes. It could be.

Q. And probably this first one, F-I, is probably a letter your wife wrote? A. Yes.

Q. At that time was she encouraging you to get your stock and sell it, if you could? A. No. I was working.

Q. But either you or she wanted some, apparently, is that right, at the time? A. It could be.

Q. All right. Now, you came in to Salt Lake, and you

talked to an attorney here to see if he could contact First Security and get your stock; is that right? A. That's right.

Q. Do you remember Louis M. Haynie? Does that lawyer's name mean anything to you? A. Yes. That probably was the one.

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Q. That's probably the lawyer. Now, here is something that's marked F-U, and here is a copy of a couple of paragraphs apparently signed. It had been typed and apparently was signed by you. It has it typewritten Charles T. Reed under a line on the bottom, and it's purportedly addressed to Mr. Louis M. Haynie, Attorney at Law, 345 South State Street, Salt Lake City, Utah. Now, let me read this to you and see whether or not you ever signed something like this or something like it.

MR. NIELSON: Well, now, I'll object to the reading of it unless it's been authenticated. I think he can show it to Mr. Reed and ask him if he signed it.

THE COURT: Let the witness read it.

MR. BERTOCH: All right, your Honor.

(Witness examines.)

A. Yes. That's the one that he had.

Q. (By Mr. Bertoch) All right, fine. Now, I show you a letter purportedly written to Mr. Ralph D. Cowan, Vice President and Trust Officer, First Security Bank, signed by L. M. Haynie; and will you look at that without reading it aloud, and tell me whether or not you saw this, and if that appears to be the letter which Mr. Haynie sent to Mr. Cowan in your behalf.

A. Well, I don't know: I never seen the letter.

Q. Would you take a look at it and see if that's in

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substance what you asked Mr. Haynie to do? A. That's true.

Q. That's true? A. Yes.

Q. All right, thank you. Now, I show you an exhibit marked F-X; and this says it's an affidavit, and it's signed apparently by Lula H. Murdock and notarized by Heber T. Hall. Now, have you ever seen that document before? A. Yes, I have.

Q. Did Mrs. Murdock do this at your request? A. Yes, she did.

Q. Did you see her sign it? A. Yes.

Q. All right. Is it true that that was an affidavit that was supposed to be sent, that you wanted sent to the First Security Bank? A. That's right.

Q. All right. Now, I show you another affidavit signed by John E. Fausett and notarized by Heber T. Hall, and will you read that and tell me if that was prepared at your request.

(Witness examines.)

A. Yes.

Q. And who was John E. Fausett? A. He's a neighbor of mine out there.

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Q. Did you work for him for some time? A. Yes, sir.

Q. And you were working for him at the time he signed this affidavit? A. That's right.

Q. And do you know who Lula M. Murdock was? A. Yes. That's my aunt--was my aunt.

Q. I see. Do you know what her position was at that time? A. She was in the corporation somewhere.

Q. She was in the corporation somewhere? A. Yes.

Q. And you mean by that-- A. President or something.

Q. The Ute Distribution Corporation? A. Yes.

MR. BERTOCH: All right. I will offer in evidence these, one at a time, your Honor; first, F-S, which is a letter of October 14, 1963. It is offered in evidence.

MR. NIELSON: I object to this one for the reason that it has not been properly authenticated, and for the further reason that in view of Mr. Reed's testimony that he didn't write the letter, it's entirely improper for any purpose at all. It's irrelevant and immaterial.

THE COURT: I don't think there was sufficient

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foundation for F-S.

MR. BERTOCH: It may be true, your Honor, and I will further identify it later with another witness. I will offer in evidence F-T, another letter, this one dated October 10, 1963.

MR. NIELSON: I object to that one for the same reason, your Honor.

THE COURT: Objection overruled.

(Defendants' Exhibit No. F-T received in evidence.)

MR. BERTOCH: And I would like to read--I'll read just a part of this, your Honor, now, to give you an idea what it was about.

(Whereupon Mr. Bertoch read from Defendants' Exhibit F-T.)

MR. NIELSON: In the interest of time, I have no objection to the other three--the other four.

MR. BERTOCH: All right. I offer in evidence, then, F-W, which is Haynie's letter to Mr. Cowan; F-X, which is Lula Murdock's affidavit; F-Y, which is John E. Fausett's affidavit; F-U, which is Charles T. Reed's letter to Louis M. Haynie. And then I want the witness to identify one more, your Honor.

Q. (By Mr. Bertoch) I show you what's been marked F-3. It is a receipt and release.. Can you tell me if that's a

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copy--or, your signature there? A. That's right.

Q. All right. You signed a receipt and release to First Security Bank when you were distributed the assets in your trust estate; is that right? A. That's right.

Q. And that included then--you signed here that you received from First Security Bank ten shares, Ute Distribution Corporation, capital stock, represented by Certificate No. 353; is that correct? A. That's right.

Q. So you received that stock certificate, is that right? A. Yes, sir.

Q. Then it says you received a trust department check in the sum of \$14.08. Is that right? A. That's right.

Q. And it says here that you received this on the 24th day of September, 1964. Does that sound about right? A. It took about three weeks before I could get it.

Q. So that's about right? 24th of September 1964? Is that right? A. Yes.

Q. So it was some time after the 24th of September 1964 that you were able to transfer and sell your stock? A. That's about the time we got it out.

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MR. BERTOCH: Now, I offer in evidence F-3.

THE COURT: F-W, F-X, F-Y, and F-Z are received in evidence. The reference to F-3 may be corrected to be F-Z.

(Defendants' Exhibits F-W, F-X, F-Y, and F-Z received in evidence.)

Q. (By Mr. Bertoch) Now, I show you a stock certificate which is--it is my understanding it is in evidence--a copy of it is in evidence as part of 1-A--

MR. NIELSON: No. It would be 12, I believe. Yes, it is. 12-A and B,

Q. (By Mr. Bertoch) Part of 12-A. I'll ask you to look at this and see if that is the stock certificate, if you remember, which you received from First Security Bank. A. Yes.

Q. On the back there appears a signature. Is that your signature? A. That's right.

Q. It says here, "Dated October 5, 1964." Do you think that's about the right date you signed it? A. It was about two weeks later.

Q. So that's about the right date, is that right? A. Yes.

Q. You endorsed this stock certificate then, apparently, on October 5, 1964? Is that right?

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A. Yes. But I already had a station wagon and all that.

Q. I see. You didn't then have to post the stock, because it was after August 27? A. Yes.

MR. NIELSON: I object to that question as calling for a legal conclusion.

THE COURT: If he knows. This is cross-examination. Conclusions, even legal, can be called for; but I understand the witness isn't in a very good position to give Mr. Bertoch a legal opinion.

MR. BERTOCH: Thank you, your Honor. I'll withdraw the question. That's all the questions I have.

REDIRECT EXAMINATION BY MR. NIELSON

Q. Mr. Reed, Mr. Paulson asked you some questions about the transaction there at Mr. Murray's garage; and in response to

his questions, you told him that you were only supposed to be selling Mr. Murray five shares. Did you complain to Mr. Murray about that? A. Well, I didn't at the time. I thought I was going to get this station wagon.

Q. Well, did you say anything to Mr. Murray about only selling him five shares? A. Yes. We talked about it before.

Q. Well, I'm asking you if you objected to Mr. Murray at

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the time when you were signing the stock certificate that you were supposed to get five shares back? A. We went back the next day, but he wouldn't talk about it.

Q. Maybe you could explain it for me. Tell me what you said to him and what he either said or did or didn't do at that time. A. Well, we went back about four times, and we tried to get some money, we tried to get the registration, ownership papers to the car; but we couldn't get no registration, couldn't get no kind of papers for it. They wouldn't transfer the title or anything. So we was driving on his license plates, I guess. And it went on for about a month. And we decided, well, the car wasn't ours, it still belonged to him, so the only thing we could do is to give it back to him.

Q. But what about the other five shares? Did you say anything to him about that? A. No, I didn't.

Q. You didn't ever object to him about not giving you five shares back? A. No.

MR. NIELSON: All right. That's all I have.

MR. DUNCAN: Call Leonard Burson.

LEONARD R. BURSON,

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called as a witness in his own behalf, being first duly sworn, testified as follows:

THE CLERK: Would you state your name, please.

THE WITNESS: Leonard R. Burson.

DIRECT EXAMINATION BY MR. DUNCAN

Q. Where do you live? A. Gusher, Utah.

Q. How old are you? A. I'm 48.

Q. What blood are you? A. I'm a half breed.

Q. Do you know your mixed blood number? A. 45, I think.

Q. Does 22 sound right--24? A. Well, close to that. I might have forgotten a little bit.

Q. I show you what's been marked and received as Exhibit 8-A; and I'm going to ask you, this first instrument, stock power, 6 November '63, is that your signature? A. That's my signature.

THE COURT: Now, is Mr. Burson one of the so-called bellwether plaintiffs?

MR. DUNCAN: Yes, your Honor, he is.

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THE COURT: His name is not Fred Burson?

THE WITNESS: No, sir. It's Dick. Leonard R.

MR. NIELSON: It's Leonard Richard Burson, your Honor.

THE COURT: I see.

Q. (By Mr. Duncan) Is that your middle initial, for Richard? A. Yes, sir.

Q. And you actually go by Dick? A. Yes, Richard and Dick.

Q. This instrument that you signed-- A. It is right there.

Q. You signed this before Mr. Gale? A. That one, yes, sir.

Q. Was it filled in? A. Then it was.

Q. When you signed it? A. Uh huh.

Q. I show you the stock power dated 6 November '63 for 496, share number. Is that your signature? A. That's my signature.

Q. Did you appear before Mr. Gale on that date? A. Yes, sir.

Q. I show you what purports to be an affidavit, dated 6 November '63. Is that your signature?

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A. That's not my signature.

Q. That is not your signature? A. Yes, sir.

Q. Are you sure? A. You bet.

Q. Have you ever seen an affidavit like this? A. I never did.

Q. I show you--that one you just identified refers to Certificate No. 24. This purports to be an original also, dated 6 November '63. Is that your signature? A. No, sir.

Q. It is not? A. No, sir.

Q. Did you ever authorize anybody to sign your name? A. Yes, sir.

Q. You never authorized anybody? A. Nobody.

Q. Did you ever see this before today? A. Never did. In court I did.

Q. Who did you sell your first five shares to? A. LeVere Labrum.

Q. What was his business? A. L & L Motor Company in Roosevelt.

Q. Used car business? A. Yes, sir, he still runs it.

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Q. When you signed these first two instruments that you acknowledge having signed, did you go before Mr. Gale? A. When LeVere was back home, yes, I did.

Q. LeVere Labrum, the car dealer? A. He's not there now. Lynn is, but LeVere is in Phoenix.

Q. Who did you go with? A. Myself and my wife Eva.

Q. Did Mr. Gale say anything in words or substance to discourage you from selling? A. I done it on my own. But I didn't--I don't think I got beat. At the time I had a '58 Ford. Do you want me to go through the whole thing?

Q. Let me ask the questions.

MR. BERTOCH: Your Honor, may I interrupt just a minute. I thought the reporter asked him what his answer was, and I don't think he repeated it. I think we should have it in the record. What he said was, "I don't think I got beat."

MR. DUNCAN: I think that's in the record, counsel.

MR. BERTOCH: I just wanted to make sure it was.

THE COURT: He said he didn't think he got beat.

Q. (By Mr. Duncan) Now, when you went before Mr. Gale, your wife and Mr. Labrum, the car dealer, were with you? Is that correct? A. That's right.

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Q. Did Mr. Gale say to you in words or substance, "Don't sell this stock"? A. He never said a word.

Q. Did you ever post, as far as you know? A. Never did.

(Plaintiffs' Exhibit No. 106 marked for identification.)

Q. (By Mr. Duncan) I ask you if this contains your signature, a number of items together with the alphabet up here in lower case written by yourself. A. Yes, sir. That's written by me on Sunday. Last Sunday.

MR. DUNCAN: We offer it, your Honor.

THE COURT: As simply an exemplar of signature?

MR. DUNCAN: As his handwriting.

THE COURT: Received.

(Plaintiffs' Exhibit No. 106 received in evidence.)

MR. DUNCAN: That's all the questions we have, your Honor. We now offer Exhibit 8-B, which is the social worker's files on this plaintiff. We would call the Court's attention particularly to the sheets labeled, "Individual Court History and Social Summary," and particularly the sentence, "As can be ascertained from his long criminal record, Mr. Burson drinks to excess."

THE COURT: Received.

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(Plaintiffs' Exhibit No. 8-B received in evidence.)

Q. (By Mr. Duncan) What did you receive for your stock, Mr. Burson? A. Well, when I went and talked to him, I told him--well, at the time I had a '58 Ford. I was working then.

Q. You were what, sir? A. Landscaping at Vernal. And the transmission went out, so I went and talked to LeVere, for a '60 Ford. I bought it for my family.

Q. So what did you get for the shares you sold? A. I bought it ahead of time. And he charged me \$3 a month while I used the car.

Q. So you got a car. Did you get any cash? A. You bet.

Q. How much cash? A. I got--I put \$200 in the bank for myself, and the rest I give to my family.

Q. Do you know how much that was? A. \$5,000 altogether.

Q. \$5,000? A. Including that '60 Ford.

Q. How much for the car? A. About \$1,300.

Q. \$1,300?

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A. \$1,800 altogether

Q. \$1,800 for the car? A. When I got through paying for it, sure.

Q. Did you understand what the assets were in Ute Distribution Corporation at the time you sold your stock? A. I never was advised.

MR. DUNCAN: That's all.

CROSS-EXAMINATION BY MR. KLEMM

Q. Mr. Burson, you've had twelve years of education, haven't you? A. I didn't graduate, though. I went to school in Riverside, California.

Q. You almost graduated, did you? A. Well, practically.

Q. When you received your ten shares of stock, did you understand what that stock was for? A. Not at the time, no, sir. They didn't advise me on nothing. If I knew I couldn't sell it to my kids, I'd have sold it to them. They didn't advise me nothing. I could have sold it to them right there.

Q. Did you go to any of the meetings they held? A. Oh, once in a while. Not too often.

Q. Didn't you hear in those meetings about termination of the mixed bloods?

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A. I heard something like that, but I didn't know.

Q. You were one of the mixed bloods, weren't you? A. Sure. I'm still an Indian.

Q. I didn't hear that. A. I said I'm still an Indian.

Q. You understood what the process was of termination, didn't you? A. Sure. Everybody knew it, didn't they? Not at the time. Not like they talk and everything. But we realize now. We weren't advised on it.

Q. You realized at that time, didn't you? You knew what was happening on the termination program, didn't you? A. Who knows? I didn't. That guy up there did.

Q. Well, what was your understanding of what those shares represented? A. Well, I realize now it's a lot to lose.

Q. What did you realize then? A. Losing our rights.

Q. Well, did you realize that these ten shares represented your interest in certain assets of the tribe? A. Well, at the time I didn't think too much about it, because everybody

was having a hard time. Not always working.

Q. And everybody was selling them, too, weren't they?
A. Yes, that's right.

Q. And you joined the crew, and you went out and sold, too,

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didn't you? A. You bet.

Q. And you went over to Mr. Labrum, didn't you? And you sold all ten shares to Labrum, didn't you? A. That's right.

Q. Do you remember when you first talked to the Labrums about it? A. In '63. I don't know. That's when I had the '58 Ford.

Q. It was still summer in '63, wasn't it? A. But everybody was selling them. Like anybody else, he thought he wanted something better for his home. So that's when I sold them.

Q. Mr. Burson, it was sometime in the summer of 1963 that you first talked to the Labrums, wasn't it? A. Yes, sir.

Q. And they told you you had to go out and post them, didn't you? You had to go out and offer them for sale? A. I didn't.

Q. Did you ever go out and offer them for sale? A. Never did.

Q. You never went out to the Bureau of Indian Affairs--
A. Never did.

MR. KLEMM: What's the number?

MR. DUNCAN: 8-A.

MR. KLEMM: May I have 8-A, please?

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THE COURT: Mr. Burson, are you planning on being here tomorrow?

THE WITNESS: We was going home if you get through with me. I've got to go home. I'm working in Roosevelt there. Sawmill.

THE COURT: I must leave very shortly. I'd like to accommodate this witness.

THE WITNESS: I stayed over last night, and we was going

home this afternoon if I could get there. I called last night.

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Q. Is that on or about the date that you signed that over to sell? A. That's right.

Q. All right. Did you subsequently take this document or mail this document to the Bureau of Indian affairs? A. Never did. It was signed right there in that bank, First Security.

Q. And who was present at that time? A. Mr. Gale.

Q. Did you later receive a letter from the Bureau of Indian Affairs from the superintendent about your stock? A. Never did.

Q. I show you a document marked "Notification" as part of your file-- A. If I had it, I'd have it with me.

Q. You did not receive this? A. No, sir.

Q. And that's your testimony? A. Yes, sir. If I had it, I'd have it with me.

Q. But you did go to Labrum's, and you did make a deal? A. That's right, I did.

Q. And you're satisfied with that, aren't you? A. You bet. I was then.

Q. Can you tell us when that deal was closed? A. It was in August.

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Q. August-- A. I don't remember the date.

Q. August of 1963? A. You bet.

Q. And you got the \$5,000 or the equivalent thereof for your stock? A. You bet.

Q. And that's what you-- A. Besides that car.

Q. And that's what you put on the offer to sell? A. You bet.

Q. Are you satisfied with that transaction? A. You bet. I was then.

Q. You were happy to get the money, weren't you? A. You bet. So was my family. Who wouldn't be?

Q. Now, Mr. Burson--I'll withdraw that question. I have nothing further.

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CROSS-EXAMINATION BY MR. PAULSON

Q. Mr. Burson, did you have any dealing at all with G. Richard Murray? A. Never did.

MR. PAULSON: That's all.

A. Worked for him.

CROSS-EXAMINATION BY MR. BERTOCH

Q. Mr. Burson, can you tell me which signatures-- A. You bet.

Q. --that are in there are not yours? A. These are not mine.

Q. Anywhere you want to start. A. I never saw anything like that.

Q. Just show me which signatures are not yours. A. I'll show you. There is mine. Right?

Q. That's yours. And now that's yours on-- A. Right here. Leonard Burson.

THE COURT: Just a minute. Identify the ones.

A. Okay.

Q. (By Mr. Bertoch) That's yours on a stock power dated the 6th day of November 1963? A. That's right.

Q. Signed in the presence of John Gale, is that right?

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A. That's right.

Q. All right. A. And there is mine.

Q. That one is yours, which is a stock power dated the 6th day of November 1963? A. Right.

Q. Before John Gale. Right? A. Right.

Q. All right. A. And that's not mine.

Q. All right. The one you say is not yours is what purports to be an affidavit dated the 6th day of November 1963. Is that right? A. That's not my signature.

Q. That's not your signature? A. And that is not either.

THE COURT: Before whom is it signed?

Q. (By Mr. Bertoch) That is before John B. Gale. All right. Now, are there any others that are not yours? A. As far as this goes back here, that's not mine.

Q. All right. Just a moment. Let's identify that. A. That certificate, I never saw it in my life.

Q. That is another affidavit. It has the same date, 6th day of November 1963. So let's see if we can identify it further. The first one, the 6th of November, is an affidavit

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which describes the grantees or the payors as Lynn Labrum and Miriam Labrum; and the second 6th of November affidavit indicates as payors, Lloyd L. Labrum and Oleta Labrum. All right. Now, will you for me sign your name six times there, please?

A. Yes, sir (writing).

Q. All right. Thank you. While I'm having that marked, let me ask you just a couple more questions, Mr. Burson. Do you occasionally get intoxicated and under the influence of--

A. When I'm not working, sure. I drink when I work in the sawmill. So does everybody, all over the mountains, when I'm working in the timber.

Q. Is your signature sometimes somewhat affected by alcohol? A. Not that I know of.

Q. Are you under the influence of alcohol at this moment to some extent? A. No, sir.

Q. You have been drinking, though? A. I did last night with Bobby Tillman and Lindeman from Red Lodge, Montana.

Q. Did you have any drinks that day? A. No, I didn't. I had coffee. You bet.

Q. You have liquor on your breath now, isn't that true? A. I did this morning.

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Q. All right. A. But I'm not drunk.

Q. I show you what's been marked F-A-1, and is it true that at my request, Mr. Burson, you placed your signature on here six different times; is that correct? A. Yes.

Q. Is that as you ordinarily sign your signature? A. Yes, sir.

Q. As far as you know? A. Uh huh.

MR. BERTOCH: I offer it in evidence, your Honor.

MR. NIELSON: No objection.

THE COURT: It will be received.

(Defendants' Exhibit F-A-1 received in evidence.)

MR. KLEMM: May I indulge the Court for one or two more questions?

THE COURT: If it's very brief. Otherwise we'll have to come back.

FURTHER CROSS-EXAMINATION BY MR. KLEMM

Q. Mr. Burson, do you recall when we took your deposi-

tion on the 25th of June of 1966? A. Yes, sir, I drove out here.

Q. I'm going to read you some questions and some answers

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and then I'm going to ask you if that's your testimony. My question: "Question. Now, later when you straightened this whole deal up did you sign any papers for the Labrum brothers?"

"Answer. I signed some papers-?" A. John B. Gale, I did.

Q. "I signed some papers in front of what's his name."

"Question: John B. Gale? "Answer. John B. Gale. "Question. I show you a document entitled 'Affidavit.' "Answer. Yes.

"Question. And ask you if that document has your signature on it. "Answer. I signed it in front of him. "Question. Now, did you read this document before you signed it? "Answer. I must have. I may have." Was that your testimony at that time? A. Yes, sir. It's right there, ain't it?

Q. Is that your testimony today? A. That's my testimony.

Q. That's your testimony? A. In black and white.

Q. That's your testimony today, isn't it? You did sign an

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affidavit before Mr. John Gale, didn't you? A. That one. That one.

ADELYN H. LOGAN called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

THE CLERK: Please state your full name.

THE WITNESS: Adelyn H. Logan.

DIRECT EXAMINATION BY MR. DUNCAN.

Q. Where do you live, Mrs. Logan? A. At Fort Duchesne, Utah.

Q. Is that the Reservation? A. Yes.

Q. How long have you lived there? A. About twenty years.

Q. How long have you worked for the Bureau of Indian Affairs?

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A. About the same length of time.

Q. You came to Fort Duchesne about when, then? A. In 1945, I believe.

Q. Your husband was employed by the Bureau of Indian Affairs? A. Yes.

Q. He had worked for some what? How many years before he retired?

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A. Some over thirty. Thirty-two, three, somewhere in there.

Q. Now, what is your GS now with the United States Government? A. Eleven.

Q. And when you started back in '44, it was what? A. Three, I believe.

Q. I take it as you progressed from a 3 to 11, your responsibilities and duties increased? A. Yes.

Q. Now, will you describe for us the size of Duchesne, Fort Duchesne, and Roosevelt? A. I would think that Duchesne would have a population of about 1,000, possibly 1,200. Roosevelt 2,500, Fort Duchesne 150 people in the surrounding community, possibly.

Q. Is it a fair statement that you know most of the people in those three little communities, having lived there since 1945? A. No.

Q. You don't know most of the people? A. I wouldn't know most of the people in Duchesne or Roosevelt.

Q. Just in Fort Duchesne? A. Yes.

Q. Will you tell us and the Court of your club affiliations? A. I am a member of several local organizations and have

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offices in the counterpart of those organizations on district, State and national level.

Q. You were president, national president, of what?

A. I have not been national president of any organization.

Q. And the position you've held with the National Association of Parliamentarian-- A. Chairman.

Q. And you were president of the Western States Region of the General Federation of Womens' Clubs, which comprises the twelve western states? A. I am president.

Q. You still are. And I take it when you held these positions you didn't spend all your time in Fort Duchesne? You traveled some? A. Yes.

Q. You got to Roosevelt? A. Yes.

Q. You get to Roosevelt once or twice a week? A. Yes.

Q. Now, Mrs. Logan, when you started with the Bureau of

Indian Affairs, what was your first assignment? And then take us from that--1944, I think you told us--through your present position. A. As I recall, in 1944 I did payroll and some accounting work; went from there into cost accounting, the leasing of

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lands for oil and gas, surface leasing. The position in connection with leasing was that of law clerk. Went from there into the position as realty assistant, which was the assistant to the realty officer, and from that to realty officer.

Q. About 1960 your realty officer left the Bureau, and you took his job as in charge of that department? A. That branch, yes.

Q. Now, what is the branch described as? A. Branch of Real Property Management.

Q. For Fort Duchesne? A. Or, the Uintah and Ouray Agency of the Bureau of Indian Affairs at Fort Duchesne.

Q. Now, at that time and at all times since--that was about 1960, wasn't it? A. Yes.

Q. Your immediate superior was the superintendent of the agency? A. Yes.

Q. And of course, you had routine matters and other matters that were at your discretion and for your decision?

* * * *

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Q. (By Mr. Duncan) Mrs. Logan, were you sworn, and did you give your testimony in this case on the 12th day of July, 1966? A. Yes.

Q. Did you testify as follows: "Answer. My immediate supervisor is the superintendent, and based on, oh --there are of course routine matters that are at my discretion and decision." You so testified? A. Yes.

Q. And you would so testify today? A. Yes.

Q. You tell us about your schooling. You graduated from, was it, the Midland College? A. Yes.

Q. What was your major? A. Business law--business administration, law, and accounting.

Q. Secretarial science and bookkeeping? A. Yes.

Q. That's in Nebraska? A. Yes.

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Q. Now, some of the delegated authority to you, delegated by the superintendent, included such things as approving.

leases, surface leases, subsurface leases, and so on? A. No, it did not include that.

Q. I'm again quoting from page 7. I'm asking you if this is your testimony, following the part I did quote: "Certain things for which the superintendent has been delegated authority to approve, such as, for example, surface leases for a limited period, five years on something like this, this he would do based on our recommendation or review." A. Yes.

Q. Short term leases, whether surface or subsurface, you pretty well determine? A. They are approved by the superintendent. The authority has not been delegated any further.

Q. But in fact you made the decisions and still do, don't you? A. Perhaps. I'm not understanding your question.

Q. Well, now, Mrs. Logan, where is Martin Zollar now? You knew, did you not, we requested he be here?

THE COURT: Now, make your questions single.

Q. (By Mr. Duncan) Do you know where Mr. Zollar is?
A. No, I would not know positively, no.

Q. Martin Zollar was your immediate supervisor from what

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period of time? A. About 1960 to '64.

Q. That's Martin M. Zollar? A. Yes, I believe so.

* * * *

Q. A great many of the letters that went out over his signature, you prepared? A. Yes.

Q. I don't think you typed them, but you did prepare the language? A. I dictated them.

* * * *

Q. (By Mr. Duncan) You're familiar with the Articles of Incorporation of Ute Distribution Corporation, Rock Creek Cattle Range Company, Antelope Sheep Range Company? A. Yes.

Q. These were all three incorporated, were they not, as part of the plan of distribution between the full bloods and the mixed bloods? A. Yes.

Q. And the Rock Creek Cattle Range Company and the Antelope Sheep Range Company were simply land holding companies? A. Yes.

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Q. And there were appraisals rendered, weren't there?
A. Yes.

Q. And based on those appraisals of the assets of Rock Creek Cattle Range Company and Antelope Sheep Range Company, an offer was made--well, more correctly--an offer was made by the mixed bloods to the tribe, and the tribe purchased over 90 per cent of the stock in these two? A. Yes.

Q. Now, the forms that were used to offer from the mixed bloods back to the tribe, or the other mixed bloods, or the tribe members, were the same in all three corporations? A. Yes.

Q. I show you two that were offered yesterday, H-K and U-J. These related to Rock Creek Cattle Corporation and Antelope Sheep Corporation, and the forms were the same, except the amount was different; is that right? A. Yes.

Q. Now, the amount of the offer from the mixed blood to the tribe and the full blood was determined by the appraisal, wasn't it? A. You say the amount?

Q. Yes. A. Was determined?

Q. Did I confuse you? The Bureau of Indian Affairs had the surface rights, the land in these two corporations,

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professionally appraised? A. Yes.

Q. Based on their appraisal, the mixed blood was told, "If you advertise it for \$550 per share in each company the tribe will accept, and that's a fair appraisal?"

* * * *

Q. (By Mr. Duncan) My question is the figure of \$550 was based on the appraisal rendered by the BIA? And every mixed blood advertised at \$550? A. I'm not sure.

Q. Was that not your testimony earlier, Mrs. Logan--and I don't mean to confuse you--I'm trying to say that the figure that was put into the offer to sell on these two companies was a figure that had been determined by the Bureau? In other words, the Indian didn't wander in willy-nilly and put

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an arbitrary offering price; he was told what the price would be and the tribe would accept? A. This was the price that the tribe had, the Ute Tribe, had indicated it would pay for these shares of stock.

Q. And all the advertisements or offers were at the same price? A. No, they were not.

Q. Did anybody offer for higher than \$550? A. There

were some that offered for more than \$550.

Q. In any event, this was the figure that the tribe advised the mixed blood they would pay? A. Yes, to the best of my knowledge.

Q. Now, the stock certificates of these two corporations were delivered to the mixed blood, weren't they? A. I believe so.

Q. Now, the Ute Distribution Corporation was different from these other two corporations in a number of respects, wasn't it? A. Some, perhaps.

Q. Can you tell us in what respects Ute Distribution Corporation was different from the Rock Creek Cattle Company and the Antelope Sheep Range Company? A. The Rock Creek Cattle Company--Cattle Range Company--and Antelope Sheep Range Company--were land--their assets were land. The Ute Distribution Corporation was established

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as a receiving and holding company for revenues and unadjudicated or unliquidated claims before the United States Claims Commission.

Q. Is it fair to state that when it was incorporated it didn't own anything tangible, and the only thing that ever was owned by Ute Distribution Corporation was the cash that came from the tribe paying over their 27 per cent of payments from the Government or oil leases or what have you?

* * * *

Q. (By Mr. Duncan) Well, perhaps we should talk about this a little bit. The realty division that you headed--am I labeling it right? Realty? A. Real Property Management.

Q. Real Property Management. All right. You headed this department under Martin Zollar? A. Yes.

Q. And it fell to this department the difficult task, if you please, of parceling the various assets between full bloods and mixed bloods under the plan of distribution? A. The Branch of Real Property Management assisted with this.

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Q. And you assisted yourself personally with Mr. Zollar, didn't you? A. Yes.

Q. You're familiar, of course, with this, what's been marked U-A, the Plan of Distribution (handing)? A. Yes.

Q. And the actual processing of a notification, of a posting, of an examination of the affidavit, and the mailing of the letter to First Security Bank were conducted in your office?

A. Yes.

Q. Now, the assets, then, of Ute Distribution Corporation were simply 27 plus per cent of oil and gas leases and claims that the United States paid, and so on, to the tribe, and the tribe would then assign 27 per cent to UDC? A. The assets were the revenue from the leases.

Q. Well, the revenue went to the tribe, and the tribe paid it over to UDC? A. Yes.

Q. That's right, isn't it? A. Yes.

Q. Now, during the period from incorporation of Ute Distribution, which was December 9, 1958, through August 27, 1964, your branch, the Real Property Management branch, handled the preparation of leases, the negotiation for

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exchange of lands, oil and gas leases, for the tribe and indirectly, for UDC and charged neither the tribe nor UDC anything therefor? A. What were those two dates?

Q. Well, from the date of incorporation, which was in '58, until August 27, 1964. A. Yes.

Q. Now, at some point--in fact, right after August 27, 1961--you inquired of somebody else in the Bureau of whether or not you should be charging something to UDC for assisting the tribe and indirectly, them for their 27 per cent in negotiating these leases; is that true? A. Yes.

Q. And you were advised--what?

* * * *

Q. (By Mr. Duncan) Do you understand what I'm asking? A. Will you restate the question, please?

Q. At some point you wanted to charge the Ute Distribution

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Corporation for the services your department rendered, and you asked for authority to do so, and you were told that you couldn't do it. Now, who told you what? A. The basis for this was the law--or, the Act of August 27, 1954.

Q. Who told you, and what did they tell you? Was it Mr. Haverland advised you that you were not to charge? Mr. Collier? A. I don't know.

Q. In any event, you continued to render free leasing service, real property service, and so on to UDC until August 27, 1964? A. Yes.

Q. Now, Mrs. Logan, I show you 17-A, which is entitled, "Affiliated Ute Indian Trust Agreement." Have you ever seen it?

A. Yes, I read it.

Q. And the attached Schedule A? A. Yes.

Q. Now, what was your understanding as to who was to be included under that trust?

* * * *

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Q. (By Mr. Duncan) You recall we talked about that in the deposition. I asked you what--

THE COURT: Well, why don't you get your examination organized a little better. Now, I've overruled the objection, and we spent that time, and then you apparently abandoned the question. We'll stand in recess for fifteen minutes.

(Recess.)

* * * *

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ADELYN H. LOGAN recalled as a witness on behalf of the plaintiffs, testified further on direct examination as follows:

Q. (By Mr. Duncan) Mrs. Logan, we were talking about Exhibit 17A, which was the Affiliated Ute Trust Agreement; and now do you recall how many adult members were on that

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Schedule A to the agreement, and why they were there? A. There were eleven.

Q. And why were they placed on the Schedule A? A. They were placed under the trust, because it had been determined that they were in need of further assistance in connection with their affairs.

Q. I'm referring now to page 82 of your deposition. Do you recall when I asked you this question, and then we followed it with: "Question. You mean they were non compos mentis?"

"Answer. No, not non compos. They hadn't been declared by the Court by any means, but they were incompetent. They had acted unwisely in the expenditure of their moneys and so on." Do you remember so testifying? A. Yes, yes.

Q. And is now your understanding of what incompetency meant as to these eleven people, adults who were not non compos, but were still placed under the express provisions of the trust?

A. Yes.

Q. There was a report made, an examination made of

each of the mixed bloods, was there not? A. Yes.

Q. By a social worker working for or under the direction of

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the Bureau of Indian Affairs? A. This study was made by the-- as I understood it--was made by the University of Utah.

Q. And submitted to the agency at Fort Duchesne? A. Yes.

Q. And based on these reports, Zollar, in agreement with the Social Services Division, determined that these eleven needed further protection? A. Apparently so.

Q. I take it that thereafter from time to time Mr. Zollar would make the determination to add other individuals to this list to be included as incompetent? A. This was not my--no. This is not my understanding.

Q. You didn't know whether that happened or not? A. No. It didn't as far as I know.

Q. Some of these people, these eleven that were not declared not non compos mentis and who were listed under the express provisions of the trust agreement, actually threatened to sue the agency, didn't they? A. Not that I am aware of.

Q. Referring to your deposition, page 83: "Question. I've run across some letters in here somewhere. Some of these people didn't like that, did they? "Answer. That's right.

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"Question: They wrote letters and threatened. I think that attorney in fact threatened you on one occasion that you couldn't make a determination? "Answer. Yes." Was that then, and is that now, your testimony? A. It apparently was my testimony then. This was not the case, in reflecting--in recalling it.

Q. Now, Mrs. Logan, you had a copy of the Articles of Incorporation of the Ute Distribution corporation in your office somewhere, didn't you? A. Yes.

Q. Now, perhaps so we can make the record clear on it for the Court and the counsel, will you tell us the step by step procedure from the first time a mixed blood came to you until finally his stock was transferred to a non-Indian. Is that too general? Do you understand my question? A. Yes. He offered his stock for sale, his shares of stock for sale, on a form that had been prepared by the Bureau. We held them until there was an accumulation of a certain number, a reasonable number. And then we posted them in six public places throughout the Reservation for a period of thirty days. This was to give opportunity to the members, both mixed blood and full blood, as well as the parent organization, the Ute Tribe, opportunity to

accept the offer. There was no--if there was no acceptance of an

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offer, then we notified the offeror, or the owner, that he could now sell this share--these shares of stock--to whomever he wanted, but at a--no less than what he had offered it to the members. Then, also in this notification, they were advised that they would, as I recall, that they would need to sign an affidavit to the effect that they had gotten what they had asked for their shares of stock. This affidavit, plus a stock power form, plus required fees, were returned to the Bureau office. These were transmitted to the First Security Bank, Salt Lake City Branch, who was the transfer agent for these shares of stock.

Q. Mrs. Logan, we've marked as Exhibit 50 various documents. The first one is marked, "Notification." And that's the one you sent to the mixed blood after the time of posting had expired in the tribe or nobody else had accepted? A. Yes.

Q. This was prepared by the Phoenix office and mailed to you? A. The form.

Q. Yes, the form-- A. The draft of it was.

Q. Did you make any changes, or was it the way they drafted in the Phoenix office of the BIA? A. As I recall, it was--

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Q. The way-- A. Yes.

Q. And each of these other exhibits in here is one of the blank forms that the Government sent to you and asked you to follow, including these instructions? A. Yes. The instructions were prepared for the sale of the Rock Creek and Antelope Sheep Range stock and substantially were the same that were applied at the sale of the Ute Distribution stock.

Q. You're familiar with these Articles of Incorporation of UDC, aren't you? A. I've read them.

Q. Now, you're aware of Article 8, are you, Mrs. Logan? I won't burden you if you're familiar. Or can we ask you to read it? Perhaps I can, and then I'll ask you questions about it. I'm talking about Article 8, and you can read along with me. "If any stockholder who is a member of the mixed blood group of said Ute Indian Tribe determines to sell or dispose of his stock in this corporation at any time prior to August 27, 1964, he shall first offer it to the members of the tribe, including the mixed blood and full blood members thereof, and no sale of any said stock prior to said date shall be valid unless and until such offer is made to said members of the

tribe in such

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form as may be approved by the Secretary of Interior. If said offer to sell is not accepted by any of the said members of the tribe, the sale thereof to any person not a member of said tribe may then be made, but only for the same or a greater amount and upon the same terms and conditions upon which it was offered to said members, and provided the superintendent of the Uintah and Ouray reservation certifies on the stock certificate that said offer to members of said tribe was made in accordance with law and the regulations of the Secretary of Interior." The next paragraph as specified: "All stock certificates issued by this corporation until August 27, 1964, shall have stamped thereon the following." And it's that legend about what the value is. You've read that article? A. Yes.

Q. It's correct, isn't it, Mrs. Logan, that in not a single instance was the certificate of the superintendent actually placed on the stock certificate? A. This--this is true.

Q. Rather early you received a letter, did you not, from the First Security Bank, and there was a discussion about accepting a certification of another instrument. Do you

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remember that? A. Yes.

Q. Now, did you ever have a discussion with Mr. Zollar or anyone else as to why these requirements were placed right in the Articles of the Ute Distribution? A. No, I had nothing to do with the content of the Articles of Incorporation.

Q. Did you understand it to be so that the mixed blood would actually see that warning before he sold and that if the certificate had to be signed, he would of course have the opportunity to see the warning? Did you understand that's what it was for? A. An arrangement was made between the First Security Bank and the transfer agent that a certificate, a separate certificate in lieu of it being placed on the--certificate of the superintendent--on the reverse of the stock certificate would be acceptable.

Q. Well, who made the determination, if you know, Mrs. Logan? Was it made by you and Martin Zollar, or was it made by First Security Bank? A. I had nothing to do with this decision. It apparently was made between the bank, the trustee, or--yes, the trust officer, I should say--and the superintendent.

Q. Now, the stock power was not supplied by the Bureau

of Indian Affairs, was it? That is, the assignment or the stock
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power? A. No.

Q. Nor was the affidavit? A. The affidavit was not.

Q. All other forms came from the BIA? A. As far as I recall.

Q. Now, you determined, you and Mr. Zollar, that your duties in connection with these sales or transfers from UDC kind of consisted of about three items to be checked. Will you tell us what they were? Before you would certify to the bank, not on the certificate, but in a letter, what things or items did you check before you wrote the letter to the bank? A. The fact that the owner of the stock had properly offered it, and of course we had, the Bureau, had posted it for the required time. Then the affidavit by the owner that he had received from the purchaser of the stock--at least, the amount that he had offered the stock for.

Q. Well, you checked to see, for example, if he was a minor under the trust, or if he was a non compos, or if he was on the trust as an adult incompetent? A. Yes.

Q. You also checked to see if he was dead? A. Yes.

Q. This was the extent of your checking?

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A. Yes.

Q. And you determined that if an affidavit came in, even if you thought it wasn't in very good form, as long as it was signed and notarized, you would accept it? A. Yes.

Q. You never refused an affidavit because of any defect or irregularity appearing on its face? A. Not to my recollection.

Q. You did refuse some when you found out the person was dead and there had to be a probate? A. If the person was dead, there couldn't have been an affidavit.

Q. Well, weren't there affidavits that came in after the person had died and you simply held those and marked them, "Not acceptable," but those were the only ones you marked, "Not acceptable"? A. Yes.

Q. Mrs. Logan, you sent from time to time after you had posted the offer and after you had sent the notification, and then received an affidavit, and it wasn't your form, and a stock power, which wasn't your form, you checked the affidavit, and you checked everyone, didn't you? A. Yes.

Q. Then you would write a letter to First Security Bank in Salt Lake?

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A. Yes.

Q. I'll show you some of them that we've offered as Exhibit 100. These are the kinds of letters you sent in, aren't they? A. Yes.

Q. You didn't affix the transfer stamps, did you? A. No.

Q. They were always affixed in Salt Lake? A. Apparently.

Q. And a number of the copies of these letters had on the copies, but not on the original, "A. H. Logan"? A. Yes.

Q. So in fact, although Zollar signed it, you prepared the letter? A. Yes.

Q. This is a fairly representative statement that appeared in exactly these words, or in essentially these same words on all of these letters you sent to First Security: "An affidavit of each of the above-named sellers is on file in this office to the effect that the sum asked for the shares offered and posted has been received." Correct? A. Yes.

Q. Who determined on that language? "Was that yours? A. In those letters? Yes.

Q. That paragraph I just read you? A. I believe so, yes. As I recall.

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Q. So you'd send a letter to First Security Bank Trust Department, attention Ralph Cowan, and you'd list the name of the mixed blood and his number, the number of shares, and then you'd put this statement in that an affidavit that they had received their money was on file? A. Yes.

Q. Now, Mrs. Logan, at some point you became aware of irregularities--I believe that was your word--in these affidavits, didn't you? A. I noted some.

Q. Well, there were in fact a great many when you could see changes--different handwriting, different ink, relatives notarizing for relatives, the grantee notarizing the signature of the grantor, erasures, changes--you noticed all these things?

A. I noted some of these.

Q. (By Mr. Duncan) And you put a little red check when you saw them? A. Yes.

Q. Sometimes you'd put A. H. L. up in the corner? A. Possibly.

Q. Sometimes you'd possibly put an exclamation point? A. Yes.

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Q. So you did note these things. Now, did you do any-

thing about it? A. No, except discussing such with the superintendent.

Q. You discussed it with Mr. Zollar? A. Yes. Mr. Zollar.

Q. And you and he determined that if you received the affidavit, that's the end; and you checked these other things they were not minors, they were not dead, and they hadn't already sold their stock--that's the end of your responsibility? A. Yes.

Q. Now, you wrote a letter, Mrs. Logan, did you not, on April 23, 1965, to Mr. Schwartz, who was the new superintendent (handing)? That's your signature on it, isn't it? A. Yes.

Q. Or a copy of it? Do you remember the letter that occasioned it? A. Not particularly, without reviewing it.

Q. All right. I'll read a paragraph--

* * * *

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Q. (By Mr. Duncan) Mrs. Logan, I'll read this fourth paragraph, and you can read along with me. "Also enclosed are copies of executed forms as an example of one case we handled. In our involvement with offering 970 shares for 129 members and the furnishing of certificates to the First Security Bank of Utah for the 808 shares sold to non-members prior to August 27, 1964, we could not help but note several irregularities and indications that advantage was being taken of some of the sellers. Since, however, the seller furnished us with an affidavit or certified statement to the effect he had received from the named non-Indian buyer the price he had asked, we did not feel it our responsibility to pursue the matter further." A. Yes.

Q. That was your summation that you sent to the new superintendent on this date? A. Yes.

Q. Now, on another occasion, Mrs. Logan, you received a letter--that is, Mr. Zollar did, but he handed it over to you--it's marked as Exhibit 54. Do you remember this letter? A. Yes.

* * * *

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Q. (By Mr. Duncan) Now, Mrs. Logan, I'm going to ask you to read this letter in its entirety and the date, and then I'm going to ask you, if you will, please, read this note in the handwriting on the left-hand side, and then we'll ask you a few questions about that. A. The letter is on the station-

ery of the Ute Indian Tribe Resources Division, November 5, 1963. Memorandum to Superintendent M. M. Zollar from R. O. Curry, Director of Resources. "Reference is made to the advertisement of stock shares for some 43 owners in the Ute Distribution Corporation, as offered on November 4, 1963. I understand that no acceptances were received to the offers made, and that your office will soon issue a certificate of instructions to the owners as to how they can now sell their stock on the open market. I called the attention on the business committee to the offers of two different occasions, and the business committee was interested because of the possible management problem that might result in the future in the leasing of their mineral rights if the 490 owners are increased by the sale of stock. The business committee took no action on this matter, but did express an interest in it and wondered what the results of these sales would

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mean. I understand that the regulations pertaining to the sale of these stocks after they have once been offered to the tribe and members of the tribe is that they can be sold to any person desiring to purchase them, but at not less than the price offered, and this is the part that concerns me most. I understand that some of the people have agreed to take automobiles as a part payment of the stock. It would seem that the acceptance of an automobile would not be fulfilling the requirements of receiving as much as the shares are offered for. For instance, with the receipt of an automobile, which costs the dealer \$2,000, and his markup of at least \$1,000, or \$1,100, the seller of the shares would receive approximately \$4,000 in value, instead of \$5,000 if he had offered it for \$5,000. I was wondering if the regulations could be construed to require the seller to receive only cash instead of equipment and chattels, as they may pass hands in some instances. I wondered if this might be discussed with our attorney or your field solicitor to see if the receipt of chattels is a violation of the sale agreement, as I am sure that some of the sellers may be taken advantage of by automobile salesmen who are anxious to obtain some of these shares of stock and at the same time effect the sale of an automobile. Signed R. O. Curry."

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Q. You received that letter a day or two after the date it bears? A. Yes.

Q. What date does it bear? A. The memorandum is dated November 5, 1963.

Q. Now, after this came to you, you wrote something in

the margin. Will you read it for us, please? A. "Note for files. This memo was discussed with Mr. Z." Mr. Zollar. "But he did not think the points raised should be a further concern of ours, since the members have been terminated. The stock is unrestricted, and they are, therefore, free to do whatever they wish, as long as the Bureau complies with CFR-243, which we will do until August 27, 1964." And my signature, or note. Initial--

Q. And you did have a discussion with Mr. Z.? A. Yes.

Q. What did he say to you, and what did you say to him, and what did he say to you about this Curry letter telling about automobiles and so on? A. As I recall, he made the comment, as I have noted here in the margin, that the members had been terminated and the stock was unrestricted and whatever they wished to do or--whatever they did was their responsibility.

Q. In other words, you and Mr. Zollar at that time made

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the decision that you were not going to attempt to warn the mixed blood against trading for cars? A. This was the opinion of Mr. Zollar.

Q. Now, did he seek Solicitor's opinion or any other counsel on that decision? A. This I don't know.

Q. But you never saw any, if he did? A. No.

Q. And as far as you know, that letter was never answered, was it? A. As far as I know it was not.

Q. Now, at that date, you and Mr. Zollar had a pretty good idea that some of these mixed bloods were taking cars, didn't you, for their stock, as Mr. Curry suggests? A. We perhaps had heard so.

Q. And maybe you saw the letter, did you, that the tribe sent out telling them not to until the tribe could try and raise some money about this time? A. I'm not aware of such a letter.

Q. Now, Plaintiffs' Exhibit 59, do you recall seeing the original of this, and is that your handwriting on the bottom? A. Yes.

Q. And you received it March--August-- A. August 9.

Q. August 9, 1963?

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A. 1963.

* * * * *

Q. (By Mr. Duncan) Now, Mrs. Logan, that was received by the agency on-- A. August 9.

Q. 1963. And it says: "Uintah and Ouray Agency, Fort Duchesne, Utah. Would very much appreciate having these shares

of stock in the Ute Distribution Corporation advertised for sale at the earliest convenient date. Sincerely," misspelled, "question mark." And then you noted in your handwriting, "Letter in envelope of Jet Chevrolet, Inc., Roosevelt, A.H.L." A. Yes.

Q. Did you ever try and find out who had sent this letter to you in a Jet Chevrolet envelope without signing it? A. I don't recall.

Q. Now, Mrs. Logan, can you identify this Plaintiffs' Exhibit 53-C? Principally, is that your handwriting on the bottom?

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A. This is not my handwriting.

Q. It is not? Have you ever seen this letter? A. No, I do not recall ever having seen it.

Q. Now, Mrs. Logan, you described this manual of the Bureau of Indian Affairs as your bible, because you follow it so explicitly. Isn't that a fair statement? A. Yes. They are our guidelines for various procedures.

Q. Now, one of the sections in there--and I'm sure you're familiar with this--is the appraisal section. This comes under your department, Real Property Management, doesn't it? A. The Branch of Real Estate Appraisals is a separate branch.

Q. Under you? A. No.

Q. Are you familiar with the appraisal standards and requirements and so on of the manual? A. This is not our responsibility.

Q. I appreciate that, but are you familiar with the appraisal standards and methods to be employed? A. To some extent.

Q. Have you ever or has the Bureau ever attempted or undertaken an appraisal of the mineral values underlying the Reservation? A. No, they have not.

Q. You're aware, then, however, that there are standards

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laid down for appraising minerals? For example, on this page, "Release 54-2, 10/11/57," from the Exhibit 31, a release, from the manual? It specifies how appraisals for minerals are to be conducted? You're aware of that? A. I'm aware it's in the manual. I don't recall the content of it especially now.

Q. Why didn't you undertake an appraisal of the minerals underlying the Ute reservation? Did I confuse you with the question? Do you understand the question? A. Restate it, will you?

* * * *

an appraisal of the minerals? A. This I do not know.

Q. Didn't you tell us today that it was because it was so difficult to appraise 1,200,000 acres of subsurface? A. Yes, this is true.

Q. That's the reason, isn't it? Because it was much more difficult than appraising surface? A. Yes. Granted.

Q. Now, Mrs. Logan, I want to show you some of these affidavits that are in the file. I first of all will refer

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to 88-A, and the little red tick marks are yours, aren't they?

A. Yes.

Q. You drew an arrow from Dick Bastian, a notary, to Dick Bastian, the person named as paying? A. Yes.

Q. An exclamation point. And then you noted something else here. What did you write? A. I have written, "Name .
erased, and different one entered, question mark."

Q. A.H.L.? A. Yes.

Q. Did you do anything about that transfer? A. No.

Q. Didn't hold it out, and you didn't inquire? A. As I recall, no.

Q. You never sent a general mailing to all of the mixed bloods, did you? A. No. Not that I recall.

Q. Nor did you attempt to by phone or otherwise go back of these affidavits to find out what the true facts were? A. No. This was an affidavit that had been signed by the seller of the stock. It was his responsibility.

Q. As long as it had a notary on it, that's all you cared? A. Yes.

Q. You didn't attempt to verify whether the signature was

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true or not? A. No.

Q. So at this time you simply noted for the record, was it, the discrepancy? A. I observed that this perhaps wasn't the best business procedure or--yes.

Q. An improper business procedure? A. Improper.

Q. Because here is the man notarizing, and he's the payee? Is that why? A. Yes.

Q. And there was an erasure on it? A. Yes.

Q. And it's obvious it was erased? It was obvious to you when you saw it? A. It appears so.

Q. Now, here is another one, LaVera Pikutark Reed. You remember we went over these at your deposition? A. Yes.

Q. And this is Exhibit 88-B. And here you drew an

arrow from the payee, or the person that says he paid - payor to the notary? A. Yes.

Q. Did you know that Jerry Murray was Clyde Murray's son? A. Apparently I noted this.

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Q. Again, you didn't do anything about that? In fact, about any of these, did you? A. That's right.

Q. Now, on Exhibit 88-B, is that your handwriting?

* * * *

A. Neither of these two are any of the twelve plaintiffs, don't believe.

* * * *

MR. DUNCAN: And you looked at the first two. So we can turn these over.

A. Yes.

Q. (By Mr. Duncan) Is this handwriting on 88-B yours?

A. Yes.

Q. What does it say? A. "This individual apparently did not sell prior to August 27, '64. At least, no signed stock power form was furnished this office."

Q. You made no independent verification of that? Correct? A. He did not sell prior to August 27, as it's stated there.

Q. These marks on the side and the exclamation marks are yours? A. Yes.

Q. This handwriting down here on the bottom, would you read that? That's yours, isn't it?

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* * * *

Q. (By Mr. Duncan) Just that the handwriting is yours? The notations on the side in every case is yours? A. Yes. In that case it is.

* * * *

Q. (By Mr. Duncan). Now, Mrs. Logan, during the break you've had the opportunity of looking at all of these 38 exhibits?

THE COURT: Marked as what?

MR. DUNCAN: 88-R, Q, P--they're out of order, your Honor--I think it's A through Z.

THE COURT: Very well.

Q. (By Mr. Duncan) And they are the originals that were filed with your office, and the arrows and the check marks on them are yours? A. These are the ones I looked at right before lunch.

Q. Yes. I believe so. They've stayed right there?

A. Well, I haven't looked at any since.

Q. These are the ones you've examined this morning, and the marks are yours? We would call the Court's particular attention to 88-R, which is Richard Henry Curry, one of the bellwethers; 88-Q, Marguerite Murray Hendricks, one of the bellwethers; and 88-P, Louise Allen Case, who is one of the bellwethers. And I show you now what's been marked as 2-A, and this relates to one of the bellwethers, Fred Burson. And you have written in the margin in your handwriting, "5 typed in, 6 written over it, exclamation point." That was

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written by you at the time the affidavit was filed? A. It looks as if it was my writing, yes.

Q. And you did nothing at that time about it excepting to verify or contact Mr. Burson or Mr. Bastian? A. There was nothing done about it.

* * * * *

Q. (By Mr. Duncan) Mrs. Logan, I show you what's been marked and received as Exhibit 42-B. You're familiar with this letter and the attachment, are you not? A. Yes. I recall reading this.

Q. And they both bear your initials in the corner, don't they? A. Yes.

Q. Now, referring to this second letter attached to the exhibit, you've indicated your initials and "11/14/63." That's the date you received it? A. That was the date that I apparently read it.

Q. Yes. Now, there is this statement that appears, and I'm going to read it to you and ask you about it. This is in the sixth paragraph of the first page of this letter from First Security Bank to Mrs. Sixkiller. "We have held up two of the transfers which were requested in Mr. Zollar's letter of November 12, 1963, as you had advised him of assignments made by these two individuals for distribution to them on their

stock."

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And they name it. Did you from that understand that the bank was looking to Superintendent Zollar to determine what transfers should and should not be made?

MR. KLEMM: I'll object to what the bank--

THE COURT: The objection is sustained as far as the bank is concerned--I should say, as far as the Government is concerned.

Q. (By Mr. Duncan) Did you have any discussion with Mr. Zollar about that language I've just read you of the letter; namely, that Mr. Zollar is advising the bank to hold up on transfers? A. This particular paragraph had nothing to do with the Bureau's responsibility in the--in connection with the sale of the Ute Distribution stock.

Q. This was in connection with the assignment of the distribution-- A. Yes.

Q. Now, did you discuss that paragraph or the substance of that paragraph with Mr. Zollar? A. I don't recall.

Q. Now, I'll read you the sentence or two from the first letter. This is from Mr.--can you tell me that name? A. George W. Hedden.

Q. Hedden, assistant area director of the Department of Interior, Bureau of Indian Affairs, to Mr. Zollar, dated

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July 18, 1963. And it says, "Realty," and your initials in the corner? A. Yes.

Q. Written in. You can follow me. "The law requires that the shares be advertised, so that the members of the Ute Tribe may have an opportunity to purchase them if they wish. It is also felt that sales of stock should be advertised once every three months, so we will comply with the law, and also offer a service to the people wishing to sell their shares. This will be a burden on the staff, but we should offer every opportunity for the people owning the shares to secure the best price possible, and still fit the advertising in with our work load." Do you remember reading that letter? A. Yes, sir.

Q. That when you determined you were to advertise it every three months? A. We posted the offers every three months. We didn't advertise them.

Q. And did you understand from that, or did you--I'll strike that. Did you discuss with Mr. Zollar the direction of

Mr. Hedden that you should take every opportunity to assure the best price possible? A. This was--only insofar as the responsibility of the

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Bureau in having the members who wished to sell their stock offer them to other members for first opportunity to purchase.

Q. Now, Mrs. Logan, were you aware that Mr. Bumgarner had written Senator Moßs, Senator Bennett, and that the Department of Interior had answered Senator Bennett or Senator Moss concerning the transfers of the UDC stock? Were you aware of that? A. I don't believe I recall having read those letters.

Q. Do you recall receiving this letter from--I'm showing the witness Exhibits 56-A and 56-B, and 56-C--were you aware of the existence and contents of these letters identified as Plaintiffs' Exhibit 55 from the Bureau of Indian Affairs to Mr. Zollar? Is that your initial? A. No, that is not my initial.

Q. Were you aware of this complaint by this man in Maryland to the Congress, and the Congressional letter to the area director who in turn wrote Mr. Zollar? Were you aware of that? A. No.

Q. Now, the Curry letter, you wrote in the-margin that you would follow CFR-243? A. Yes.

Q. You were familiar with it? A. Yes.

Q. I show you what's marked Plaintiffs' Exhibit 15, which

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is a copy of 243; and referring to 243.8, the statement, "The superintendent shall furnish to such purchaser a certificate." In point of fact, you never--that is, the superintendent never furnished a certificate to any purchaser of UDC stock, did he? A. The first part of--the major portion of 243 applies to the sale of land, of real estate--

Q. Now, Mrs. Logan, your counsel may ask you that. I just would like you to answer my question, please. A. What was your question?

Q. My question is, reading this Section 243.8, "The superintendent shall furnish to such purchaser a certificate," you never did that, furnish a certificate to the purchaser of UDC stock? A. This is not a requirement in connection with the UDC stock.

Q. Well, that may be for the Court to decide; but did you ever furnish a certificate from the superintendent to the purchaser of UDC stock? A. No, we didn't--did not do anything that was not required of us.

Q. You didn't furnish the certificate, though-- A. No.

Q. --to a UDC purchaser? Thank you. Now, Mrs. Logan, I am going to show you Plaintiffs' Exhibit 35, which is a letter

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dated October 13, 1961, on the letterhead of the Department of Interior. A. Yes.

Q. And it's addressed to Mr. Aspinall. Do you know who he was? A. Senator from Colorado, as I recall.

Q. Right. And it's signed by--is that Mr. Kelly? A. It appears to be, yes.

Q. Assistant Secretary of Interior? A. Uh huh.

Q. Now, I'm going to read you part of this letter and ask you if you ever had these contents brought to your attention, and the notes on the last page that Wayne H. Aspinall is Chairman of the Committee on Interior and Insular Affairs. "A mixed blood Ute can sell his stock in the Ute Distribution Corporation if he wishes to do so, and the pending bill will make no changes in the law in that respect. The mixed bloods have been pretty well convinced, however, by an educational campaign that they should not sell their stock because it represents their undivided interest in the tribal minerals and claims, the value of which is uncertain. Valuable minerals are known to exist, but their value could fluctuate over a wide range." My question is, do you know anything about an educational campaign directed toward the mixed bloods to

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convince them that they shouldn't sell their stock? Was there such a campaign conducted by the Fort Duchesne agency? A. I'm not aware of it especially.

Q. Now, the next paragraph reads: "Although there is no present problem over voluntary sales of the stock, there is an immediate danger that the stock may be lost by reason of being offered as security for relatively minor debts, and then being levied upon to satisfy the debts. Persons seeking control of the corporation could obtain a substantial block of stock in this way. Moreover, the mixed bloods would normally not receive a fair value for the stock that is taken from them in this way." Have you ever read that paragraph before? A. I think perhaps I have, yes.

Q. About the time it was written, in October of '61? A. This type of correspondence often comes across our desk by way of information, in regard to hearings on bills that are

pending. Perhaps in connection with that I read it.

Q. And then after reading it, if you did, did you make any effort or did the agency make any effort to prevent persons seeking control of the corporation from obtaining a substantial block, or to head off the mixed blood from losing his stock as security for relatively minor debts? A. I believe the contents of that letter would not have

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been regarded necessarily as a directive.

Q. My question is did you do anything? A. No.

* * *

Q. (By Mr. Duncan) Mrs. Logan, do you know of numerous consultations between the Bureau representatives and tribal members in 1954 and '5? A. I presume this is after the legislation, the Act

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of August 27, 1954?

Q. Well, do you know of any consultations, numerous consultations in that period of time between the Bureau and the members of both groups? A. Following the enactment of 1954 legislation, and in the division of assets between the two groups, there were consultations in determining the value of the lands or the share of the lands that the mixed blood members would be acquiring.

Q. Were you aware that new appraisal procedures were adopted, so that the Bureau might more effectively carry out its trust responsibilities in 1954? A. I don't believe that they would have necessarily been any new procedures.

Q. You knew of no new appraisal procedures in 1954 adopted by the Bureau that would enable you to better discharge your trust obligation to the mixed bloods? A. I can't recall.

Q. Were you ever advised in 1954, '5, or '6, that the appraisal policies and the realty policies of your division had been changed and that new staff had been added for purposes of appraising the assets? A. I can't recall that there was any-- so long ago--that there was any difference. I don't recall what the policy was prior, especially.

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Q. Do you recall any regulation and manual procedures that had been changed during those years to enable you better to evaluate the assets of the mixed bloods? A. Without refer-

ring to regulations that were in existence then, I'd be unable to answer that.

Q. At this time you recall no changes? A. I can't recall any. I can recall none.

* * *

MR. DUNCAN: Thank you, your Honor.

Q. (By Mr. Duncan) Now, Mrs. Logan, I'm going to show you what's been marked as Plaintiffs' Exhibit 27-B from your files and call your attention to the statement, "A Proposed Regulation for Termination of Federal Supervision." You've seen these before, haven't you, this exhibit? A. Yes. I recall having read these, I believe.

Q. Now, you'll notice the page I've clipped, which is the copy from the office of the Secretary, Termination of Federal Supervision. This was the suggested form from--

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* * *

Q. (By Mr. Duncan) You now have had opportunity to read paragraph 3 of this instrument? A. No, I haven't.

Q. Will you do so? And particularly notice that the language, "except as provided in said Act of August 27, '54," appears in this letter from the Secretary of Interior. A. Yes.. It obviously does.

Q. And you will notice that in the notice, which is United States Exhibit H, Federal Register Volume 168, Volume 26, the same language occurs as this paragraph 3, but that exception is not stated in the notices published. You see that? A. Yes.

Q. My question is, do you know why it was deleted? A. No, I don't. These are proposed regulations, and oftentimes the original draft of proposals do not appear in final form in that way. In fact, this is not the final regulation, either.

Q. In any event, you didn't have a discussion with Mr. Zollar or Mr. Hedden nor somebody about why that phrase was deleted in the published form? A. No, I didn't.

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* * *

Q. (By Mr. Duncan) Mrs. Logan, did you ever exercise any authority to make policy decisions? A. Only that which would have been given me.

Q. I asked you that same question at the time of your deposition. On page 87 I asked you as follows--this was asked by Mr. Klemm of you: "As far as you know, and in accordance with your job description, do you have any authority to make policy decisions?" Answer. No, I would interpret and carry

out the policy that had been predetermined. "By Mr. Klemm: Where do you find those policy decisions that you've referred to? "Answer. Well, they're contained in CFR, the Indian Affairs Manual, various directives and regulations other than those two."

MR. DUNCAN: Yes. "Question By Mr. Klemm: Where do you find those policy decisions that you've referred to? "Answer. Well, they're contained in CFR, the Indian Affairs Manual, various directives and regulations other than those two. "Question. Is it fair to say that your job is to

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carry out the regulations that have been drafted for and on behalf of the Bureau of Indian Affairs? "Answer. Yes. That's what it is." Did you so answer? A. Yes.

Q. Do you so today? A. Yes.

Q. Just one other question, Mrs. Logan. When you observed that certain of the instruments, the affidavits and the stock assignments and so on, had the name of the person who'd paid, purportedly paid, and the grantee was in a different hand or so, didn't that put you on notice that somebody had gone out and rounded up the buyer after the execution of the instrument? A. No.

Q. I refer you to page 49 of your deposition. We're talking about this subject: "And you certainly observed it at the time? "Answer. I think there's no question but what--that perhaps at the time the person had decided to sell the stock, that the particular buyer in this case was not known, and somebody else rounded up the buyer." So that was your testimony at that time. Is it today? A. That was my testimony then, and it will not be changed.

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Q. That is, that when you noticed that the grantee or the assignee was different, in a different handwriting or different colored ink, that that told you that the mixed blood had sold it or assigned it before the buyer was rounded up? A. Yes.

MR. DUNCAN: Your witness.

CROSS-EXAMINATION BY MR. KLEMM

Q. Mrs. Logan, at the beginning of your testimony you talked about some appraisals on two land corporations. Can you tell us when those appraisals were made? A. As I recall, the appraisals were made for the two land--for the two land com-

parties. In order to determine the value, the 27 per cent value of the land that the mixed bloods would be entitled to through these two corporations, the appraisals would have been made in about 1958, I presume.

Q. Well, tell us specifically the primary purpose of the making of those two appraisals. A. The two corporations-- or, the mixed blood people decided to form these two land corporations in which to take their share of the land of the Ute Indian Tribe to which they were entitled, their 27 plus per cent share. And in order to arrive at their fair share of the value, these appraisals were made.

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Q. Were these appraisals made in connection with the sale of the stock of those two corporations? A. No, they weren't.

Q. Did they have anything to do with the sale of the stock at the time they were made? Was there any connection at all between the making of the appraisals and the sale of the stock in the two corporations? A. No.

Q. As a matter of fact, they were made in order to perpetuate the division of the assets, weren't they? A. To carry out the provisions for the division of the assets.

Q. Carry out what provisions? Where were those provisions found? A. In the statute.

Q. In Public Law 671? A. Yes.

Q. As a part of the work of distributing the assets which were susceptible to equitable and practical distribution, the appraisals were made? A. Yes.

Q. What does the term, "assets susceptible to equitable and practical distribution" mean to you? A.. It would mean land. Surface.

Q. Well, doesn't it mean assets that could properly be

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divided? A. Could be appraised and divided, yes.

Q. And Public Law 671 talks about those kinds of assets, doesn't it? A. Yes.

Q. In fact, a great deal of the work that was done by the Bureau of Indian Affairs and the tribe and the mixed blood group, the management group, had to do with the division of assets which were subject to equitable and practical distribution; isn't that correct? A. Yes.

Q. And in order to take care of this particular phase of the termination program as set forth in Public Law 671, you had to make these two appraisals? Isn't that correct? A.

Yes.

Q. However, those two appraisals were subsequently used in determining the value of the stock, weren't they? A. Yes, they were.

Q. Who determined the value of that stock?

THE COURT: Of what stock?

Q. (By Mr. Klemm) Of the stock of the two corporations, the land corporation, Antelope Sheep Corporation and the Rock Creek Cattle Corporation. A. This would have been the decision of the governing body of the Uintah Tribe, the Uintah and Ouray Tribal business

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committee, in conjunction with their legal advisor.

Q. Who was their legal advisor? A. Mr. John Boyden.

Q. Who was it that bought that stock? A. The Uintah Tribe purchased--

Q. The tribe bought all of it, didn't they? A. It purchased about 93 per cent of it.

Q. All right. Now, the assets that went to the Ute Distribution Corporation, were there any such assets that were susceptible to equitable and practical distribution? A. In my opinion, no.

Q. As a matter of fact, the corporation was set up to manage the assets that were not of equitable and practical distribution, wasn't it? A. This was the purpose of that corporation, yes.

Q. And there were no appraisals made in connection with that stock, was there? A. No.

Q. There was no appraisal made in connection with those assets, was there? A. No.

Q. Now, at the time that the distribution was made, was there any cash in the accounts of the Bureau of Indian Affairs that belonged to some of these mixed bloods? A. The moneys that were there were distributed or paid out

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to the mixed blood members, if there were any moneys being held in their accounts.

Q. And was any of that money retained by the Bureau of Indian Affairs in connection with this distribution? A. None was retained after the termination date. It had all been distributed or disbursed prior to it.

Q. What was the termination date? A. August 27, 1961.

Q. And you have become familiar with Public Law 671, haven't you, Mrs. Logan? A. Yes.

Q. You're familiar with the regulations that were passed pursuant to that Act? A. Yes.

Q. Now, by the time the date of that termination date was reached, August 27, 1961, had the assets of the Ute Indian Tribe been fully divided as much as could equitably and practicably be accomplished? A. This had all been done prior to the issuance of the proclamation.

Q. All right. Now, what means was taken by the Bureau of Indian Affairs and the tribe and the mixed blood group to divide the assets that were not susceptible to equitable and practicable distribution? A. The Ute Distribution Corporation was formed for this

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purpose: to act as a holding and receiving company for revenues from these assets that were not susceptible to practical and equitable--

unadjudicated and unliquidated claims in the United States Claims Commission, and oil, gas, and other mineral rights.

Q. Thank you. Now, Mrs. Logan, counsel has already referred to Exhibit 17-A and 17-B, and I believe it's been described

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as the Affiliated Ute Trust Agreement, and I believe you testified you were familiar with that agreement. Can you tell us the circumstances surrounding the drafting of these agreements?

A. The trust agreement was entered into for--to cover the assets, the holdings of the minors to protect the interests of the minors of the mixed blood group--of the mixed blood group.

* * * *

A. Included in the legislation was the requirement that the Secretary protect the rights of the minors; and so it was for--

Q. (By Mr. Klemm) Were there any others that were included in that?

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A. The minors and non compos and those who were not capable of conducting their own affairs.

Q. Are you familiar with the circumstances surrounding the drafting of these agreements? Weren't you personally involved in preparing Plaintiffs' Exhibit 17-B, which purports to

be a schedule of minors and non compos mentis and others? A. Yes. This would have been taken from the final roll as published in the Federal Register.

Q. Well, are you aware of the purpose of this agreement? A. Yes, I feel so.

* * *

A. I think--

Q. (By Mr. Klemm) What was your understanding as to the purpose of the Affiliated Trust Agreement? A. To protect the rights of the minors, the non compos mentis, and those who were in need of assistance--who were in need of assistance in the opinion of the Secretary to conduct their affairs.

Q. Were these exhibits drafted pursuant to the statute,

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Public Law 671? A. Yes, Section 22.

Q. Now, Mr. Duncan read you a portion of the Articles of Incorporation of the Ute Distribution Corporation, which mentioned something about a certificate to be placed on the stock by the superintendent of the agency. Do you recall that? A. Yes.

Q. Mrs. Logan, was there any substitute made for that certification? A. Yes. There was an agreement with the First Security Bank that a separate certificate that they would--that they would permit a separate certificate to be furnished, rather than the requirement of the endorsement on the back of the certificate itself by the superintendent.

Q. Was such a certificate prepared? A. It was in all cases.

Q. Who prepared it? A. This was prepared in our Branch of Real Property Management.

Q. Did you do that? A. Yes.

Q. You prepared a form certificate? A. Yes.

Q. Then on each occasion you filled it out and had Mr. Zollar sign it; is that correct?

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A. Yes. And this accompanied the stock power form to the bank.

Q. Why was such a substitute necessary? A. For facilitating the procedure, expediting it. The stock certificates were held in the Salt Lake City office of the bank, of the trustee. They would have had to be mailed out as people sold their stock for the signature on the certificate itself by the superintendent.

Q. Actually, it was a convenience for the bank, was it

not? A. It was facilitating--yes.

THE COURT: Do you know whether there was any written agreement by the corporation to that procedure?

THE WITNESS: This I don't know. There was an agreement--there was a letter which came from the trust department of the bank setting out the procedure that had been agreed to. And whether or not the Ute Distribution Corporation--to what extent they were--knew of this--I don't know.

THE COURT: Do you know why the stock certificates themselves were not delivered to the Indians? Was that because there was some provision in the Articles?

THE WITNESS: I don't know why they were not delivered, no.

Q. (By Mr. Klemm) Mrs. Logan, do you recall how many shares were sold prior to the August 27, 1964, date?

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A. As I recall seeing some correspondence that I read just this morning, there were, I believe, 808 shares of stock that were sold prior to August 27, '64. And these were shares of stock owned in whole or part by 129 members.

Q. This was all stock of the Ute Distribution Corporation? A. Yes.

Q. Mrs. Logan, you're not in the appraisal department, are you? A. No.

Q. And you're not really familiar with the appraisal procedures of the Bureau of Indian Affairs? A. This is a separate branch of the Bureau of Indian Affairs, apart from Real Property Management.

Q. Mrs. Logan, I show you Plaintiffs' Exhibit 50, which purports to be a set of documents that were used in connection with the transfer of the UDC stock. I'll ask you if you would designate by some means, possibly by placing an X at the corner of each document, which ones were actually used in connection with the sale of this stock. A. This particular group of exhibits contains more than what was used in connection with the transfer or sale of Ute Distribution stock. This notification was used (indicating). This one was not. This one was not. This one was not. This one, the offer to sell, was. This one was not. This one was not. This set of instructions were set

up for the sale

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of the Antelope Sheep - or, were set up prior to the sale of the Antelope Sheep and Rock Creek Cattle Corporation stock. And insofar as practicable and possible, they were used for the sale of the Ute Distribution stock. This is a separate certificate that was used in lieu of the superintendent's certificate on the reverse of the Ute Distribution stock certificate. So there are three.

Q. You have marked those three documents that were actually used? A. One, two, three. Yes.

Q. And the others were not used in connection with this sale? A. That's right.

Q. Mrs. Logan, you're in charge of the Realty section - what did you call it? A. Real Property Management.

Q. Real Property Management. And in connection with your duties you make leases, or you accept applications for leases on the property that's owned by the Ute Indian Tribe?

A. That is held in trust for the Ute Indian Tribe or its members.

Q. Have you searched your records to see if you could find any leases or application or even correspondence about oil shale on the Reservation? A. There are no leases of oil shale on the Ute Indian

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Reservation.

Q. Are there any applications now pending? A. There are none.

MR. KLEMM: I think that's all I have.

MR. PAULSON: No cross-examination as to defendant Murray.

CROSS-EXAMINATION BY MR. BERTOCH.

Q. Mrs. Logan, is it true that there were 490 members on the mixed blood roll? A. Yes.

Q. That means there were 4,900 shares of Ute Distribution stock issued, is that correct? A. That's the way I figure.

Q. And as of August 27, 1964, there had been 808 of those 4,900 shares that had been sold by the mixed bloods; is that correct? A. Yes.

Q. Involving 129 of the 490 mixed bloods, is that right?
A. Yes.

Q. All right. Now, making reference to 17-A and B, which is the Affiliated Indian Trust Agreement, and the Schedule A attached thereto, do you know how that trust was terminated in connection with any particular minor? A. I don't know the requirements that the bank had or placed

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upon its--upon the--those who were in the trust. No.

Q. You don't know whether or not it terminated automatically as soon as they became 21? A. This was my understanding as far as the minors were concerned, yes.

Q. Now, what is your understanding, if you have any, with respect to how it was terminated with respect to these eleven individuals who were on a schedule because they were considered at some time or other incapable of handling their own affairs? A. I was not aware that any of the eleven had been released from the trust.

Q. I see. You heard nothing with respect to Charles T. Reed; is that correct? A. That's correct.

Q. You had nothing to do in connection with that termination? A. No.

Q. All right. Now, before any stock was transferred by First Security Bank, before they would transfer it, did they require some documents from you, from your office? A. Yes. We furnished the stock power form.

Q. Yes. Go ahead. A. And the stock power form, the separate certificate in lieu of the certificate on the reverse of the stock certificate, and they required transfer fees.

Q. All right. And did they also require a letter from you

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in which you said: "An affidavit signed by each of the sellers is on file in this office to the effect that the sum asked for the shares offered and posted for sale to members has been received"? A. This letter transmitted--or, such a letter transmitted the certificate, the shares of stock that--stock power forms for those that had been sold, and this particular paragraph was included in each of the letters.

Q. So that before ever a transfer was made by the bank in connection with each transfer that you authorized or request-

ed, that letter accompanied the certificate, and it accompanied the stock power, and it accompanied the stock certificate; is that correct? A. Yes, it did.

Q. Did you say "stock certificate" at the end? A. Yes.

Q. Did the stock certificate always-- A. The separate stock certificate. Not the stock certificate itself.

Q. All right. And by "certificate," you have reference to the certificate which in substance did what? A. This was the--it's contained in the group of exhibits which--the certificate stated that the particular seller had offered his shares of stock in pursuance with the 1954 legislation and the Code of Federal Regulations, and that

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there had been no acceptor of his offer.

MR. BERTOCH: Fine. Thank you. I want to ask counsel, is my understanding correct that in Exhibits 1-A through--or, Exhibits 12--no; 1 through 12-A--that there is contained with respect to each one of them this letter from the Department of the Interior?

MR. DUNCAN: Either there or in that last exhibit--I'd have to get the number--that had "Miscellaneous." Each one of the bellwether plaintiffs is covered by a letter either in his individual file or in that exhibit. We could give you the number.

MR. BERTOCH: If we can just stipulate there is in evidence a letter covering every bellwether plaintiff in which there appears in this graph--the file which the Department of Interior says an affidavit is on file. Are you in agreement with that?

MR. DUNCAN: We so stipulate.

Q. (By Mr. Bertoch) All right. Now, in connection with these so-called irregularities that you observed and noted with red pencil, were any of those ever called to the attention of the bank? A. No.

MR. BERTOCH: That's all I have.

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* * * *

MR. DUNCAN: If the Court please, that exhibit to which we just referred when Mr. Bertoch and I were entering into that stipulation is No. 100.

MARGUERITE MURRAY HENDRICKS, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

THE CLERK: Will you state your name, please?

THE WITNESS: I can't hear what she said.

DIRECT EXAMINATION BY MR. NIELSON

Q. Give us your name, Mrs. Hendricks. A. Marguerite Hendricks.

Q. I'm going to stand real close, and I'm going to talk real loud; and if you don't hear me, you let me know, and, I'll repeat my question. All right. Are you mixed blood?

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Would you answer so the reporter can hear you? Are you a mixed blood? And talk real loud so everyone in the back can hear you. Mrs. Hendricks, are you a mixed blood? A. No, I'm not.

Q. You're not a mixed blood? A. I am a mixed blood of one-fourth of Ute Indian.

Q. All right. Did you get ten shares of stock in the Ute Distribution Corporation? A. Yes, I did get ten shares. That is, I was awarded ten shares, yes.

Q. I will show you a stock certificate in Plaintiffs' Exhibit 6-A, with your name on it, for ten shares bearing No. 178. Have you ever seen that before? A. Well, that was the first time I've ever seen one of those things. I never saw one before, don't know that I owned one. That's the first time I've ever seen one.

Q. This is the first time you've ever seen one? A. That's right. I've never saw one before. Never have.

Q. Did you sell any of your stock? A. Did I what?

Q. Did you sell any of your stock? A. I sold--yes.

Q. The first time you sold any stock, who did you sell it to? A. I sold the first five shares, I sold to Clyde Murray.

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Q. What did you get for your first five shares? A.

He traded me a '52 Mercury Comet car, a used, for my first five shares, stock shares.

Q. Did you get any money? A. No, I didn't. I asked additional cash, but he refused to give it to me.

Q. The certificate in your file says that you got \$3,500. Did you get \$3,500 in cash? A. Well, now, when we dealt on these application blanks, they weren't filled out.

Q. The \$3,500 was not filled in when you signed it? A. I don't remember. It seemed like he said \$3,500 or more or something. It wasn't filled out. So I signed when I got it.

Q. All right. The second time you sold your stock, who did you sell it to? A. I sold the second five shares to Richard D. Murray.

Q. What did you get for that stock? A. Why, I--when, I dealt with Richard, I dealt for property in Neola. Was supposed to have been a house and a lot. House and land. A lot in Neola. Was supposed to have been in exchange for my second five stock shares.

Q. Did you ever get \$3,500 on the second stock sale? A. No.

Q. Was your--

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A. As I said, these were not filled out. They didn't have prices or anything on when we dealt. There was just the application blank, but they were not filled out completely, all of them. But it did say \$3,500 or more, cash.

Q. That was the letter you got from the superintendent? A. Yes.

Q. But did you get \$3,500? A. I put it this way, that the property I traded for was not worth my five stock shares, because I valued my stock shares \$1,000 a share.

Q. But did Mr. Murray hand you \$3,500 in cash? A. No.

Q. All right. A. I never got cash on any of these deals. Never got any cash.

MR. NIELSON: That's all the questions I have of this witness, your Honor. I would, however, like to offer Plaintiffs' Exhibit 6-B, which is the social worker's file on this particular witness as against the United States.

* * * *

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MR. NIELSON: You may cross-examine.

CROSS-EXAMINATION BY MR. KLEMM

Q. Mrs. Hendricks, do you know what it means to be under oath? A. No, I don't.

Q. You don't know what it means to be under oath? A. No.

Q. Can you read? A. You'll have to speak louder.

Q. Can you read? A. Yes. What's the idea now.

Q. You went to school, didn't you? How far did you go to school? A. As far as they went in my days, and that was the eighth grade.

Q. And you learned how to read, didn't you? You did? A. Uh huh.

Q. And could you read the documents that you had, that you just looked at? A. No.

Q. Mrs. Hendricks, do you see that notification (indicating)? Did you get that when you were selling your stock? Did you

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receive a copy of this. A. No, I didn't see this. The only thing I saw was the application blank I dealt on and I signed when I applied for the five shares. That's the only thing I saw.

Q. Well, is that your signature on this offer to sell? A. Well, I don't know exactly whether that is my signature, but I certainly didn't sign anything that had this written in. There was nothing written in on any blank that I signed. It was not filled out. There was nothing written on it when I signed it. Not a thing.

Q. Mrs. Hendricks, did you get ten shares of stock in the Ute Distribution Corporation? A. No.

Q. Didn't you ever own ten shares of stock? Did you ever own ten shares of stock? A. No.

Q. Did you say no? Did you ever own ten shares of stock? A. No.

Q. You never did? Then, whose stock was it that you sold to Mr. Murray? And whose stock was it that you sold to the other Mr. Murray? Did you sell your stock to Mr. Murray?

A. Murray was my maiden name. Marguerite Murray Hendricks. Murray was the maiden name.

Q. Didn't you sell any stock to Clyde Murray? A.

That was my father's name was Murray.

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Q. Did you sell any stock to Richard Murray? A. Richard Murray was the man I dealt with.

Q. Well, how did you deal with him? A. I've dealt with Mr. Richard Murray, because I have always dealt with him, and that's how--he's about the only man I have dealt with. He's the man that has always helped me when I needed help, and I didn't figure that I was doing wrong by dealing with him, and I still deal with him occasionally. When I need his help, he helps me. I deal with him, yes. That was--figured was no reason to quit dealing with him, on account of the big mistake that was made.

Q. Did you sell any stock to him, to Richard Murray? A. Richard Murray?

Q. Did you sell him any stock? A. No. I sold him my stock shares. He's the one I sold the stock shares to. For the property in Neola. That was one of the last shares I dealt with. Richard was this last five shares I dealt with. I dealt with his father the first five. Clyde.

Q. Now, where did you get the shares that you sold to Mr. Murray, to Richard Murray? Where did you get those shares? (No answer.)

MR. KLEMM: I don't believe she can hear me, your Honor. I believe that's the problem.

THE COURT: Does she have some near relative here

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that could perhaps make her understand? Can she hear you and understand what you say?

A DAUGHTER: Yes, sir.

THE COURT: I wonder if you'd come up and stay by her. Let me ask a few questions.

A DAUGHTER: All right.

THE COURT: How old are you?

A DAUGHTER: Me?

THE COURT: No.

A DAUGHTER: Oh, the mother?

THE COURT: Yes.

A DAUGHTER: The Judge wants to know how old you are?
How old are you? He wants you to tell him.

THE COURT: All right--

A DAUGHTER: She's 65.

THE COURT: You know that?

A DAUGHTER: Uh huh. I'm her daughter.

THE COURT: Ask her if she knows what it means to tell
the truth.

A DAUGHTER: They want to know if you know what it
means to tell the truth.

THE WITNESS: That's the only thing I try to tell is
the truth. Of course, I may make mistakes at times, but I
always try to tell the truth to the nearest of my estimation.

THE COURT: Yes. And you understand that you are

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under oath to tell the truth?

THE WITNESS: Yes, sir, I understand very definitely.

THE COURT: And you know what an oath is to tell the
truth?

THE WITNESS: Yes, sir.

THE COURT: All right. Now, what we're trying to--

THE WITNESS: I never try to make mistakes.

THE COURT: Now, just a minute. You listen to me.
What we're trying to do is find out what you know about this,

and I want you to tell me and answer the questions to the best of your ability. Will you do that? Will you try to answer the questions the best you can? Ask her that.

A DAUGHTER: He wants you to try and answer the questions as best you can. I'll be right here.

THE COURT: All right. Now, you might proceed, if you can, and perhaps her--you're her daughter, are you?

A DAUGHTER: Yes.

THE COURT: We'll appreciate your help. You relay the questions through her daughter.

MR. KLEMM: Ask her if she knows where she got the stock that she sold to Mr. Murray.

A DAUGHTER: They want to know where you got the stock shares that you sold.

THE WITNESS: Well, I'm quite sure that they were awarded to me by the United States Government.

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THE COURT: Proceed.

THE WITNESS: That's right.

MR. KLEMM: Ask her if she knows why they were given to her.

A DAUGHTER: They want to know if you know why they were given to you.

THE WITNESS: Well, let's see, I imagine they were given to me as--to benefit by--to benefit by. That would be my share of the interest which I had in the Reservation. Or something that was rightfully mine, something that I could benefit by in later years. That's why they were given to me.

MR. KLEMM: Ask her if she knows what it means to be terminated.

A DAUGHTER: Do you know what it means to be terminated?

THE WITNESS: To be terminated, in other words, would be to be separated from your original body of people.

MR. KLEMM: Ask her if she was terminated.

A DAUGHTER: Were you terminated?

THE WITNESS: As far as--as near as I can understand, I have never been informed by the President of the United States that I was no longer a ward of the Government. Until the day that the President informs me with my citizenship certificate that I'm no longer a ward of the Government, I will consider myself terminated.

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MR. KLEMM: Ask her if the receipt of her stock had anything to do with her being terminated.

A DAUGHTER: Did a receipt on your stock have anything to do with your termination?

THE WITNESS: As far as I know, that they didn't. I don't think that I have been terminated, although the restrictions on my property were terminated. But, individually, I don't know that I have ever been terminated, but I know that the restrictions on my property were terminated. But individually, I never have been terminated, I don't think.

MR. KLEMM: Ask her if she received her stock in connection with the taking away of the restrictions from her property.

A DAUGHTER: Did she receive her certificate--

MR. KLEMM: Did she receive the shares of stock--

A DAUGHTER: Did you receive your shares in stock--

MR. KLEMM: In connection with the removal of the restrictions from her property.

A DAUGHTER: He says, did you receive your stock in connections with the removal--

MR. KLEMM: Of the restrictions.

A DAUGHTER: Of the restrictions of your property.

THE WITNESS: Did I receive the stock from the restrictions of my property? I just received a notice, to inform he that the restrictions were lifted on my property.

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THE COURT: Mr. Klemm, I'm not sure I understand the purpose of this inquiry. Do you have some question as to whether she is a mixed blood?

MR. KLEMM: No.

THE COURT: Or whether the statute and regulations apply to her?

MR. KLEMM: No.

THE COURT: Is the purpose of the examination simply to show her understanding or lack of understanding of her situation?

MR. KLEMM: Yes.

THE COURT: How is that relevant--

MR. KLEMM: Well, I think it's relevant in connection with contributory negligence, your Honor. If she knew what it was for and what it represented and sold it anyway, then I think that there might be some argument that we can make that she contributed to the loss that she suffered, if any.

THE COURT: I see. Well, I don't know.

MR. KLEMM: I don't have any more questions.

THE COURT: I think it's demonstrating she needs more help.

MR. KLEMM: I'm not doing myself any good.

THE COURT: Well, in any event, thank you very much. Now, if you'll just wait a minute, there may be some other questions by someone else. Just wait a minute.

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MR. BERTOCH: No questions, your Honor.

MR. PAULSON: No questions.

MR. NIELSON: We have no further questions.

* * *

MR. NIELSON: Fred Burson.

FRED LA ROSE BURSON, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

THE CLERK: Will you state your name, please?

THE WITNESS: What?

THE CLERK: State your name, please.

THE WITNESS: Fred LaRose Burson.

DIRECT EXAMINATION BY MR. NIELSON:

Q. Mr. Burson, where are you living? A. Right now?

Q. Yes. A. City Jail.

Q. What were you committed to the City Jail for? A.
Second day of June.

Q. What was it for, Fred? A. Drunk, public intoxication.

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Q. You went in on the 2nd day of June? A. Yes.

Q. And you've been there ever since? A. No, I got released.

Q. When did you get released? A. It was on the 7th. 7th of September.

Q. When did you go back? A. The night of the 7th.

Q. Was that for drunk also? Fred, are you a member of the mixed blood group of the Uintah and Ouray Reservation? A. Yes.

Q. Is your mixed blood No. 22? A. Yes.

Q. Did you receive ten shares of stock in the Ute Distribution Corporation? A. Yes.

Q. How were you notified that you had ten shares of stock in the Ute Distribution Corporation? A. How did I what?

Q. How did you learn that you had ten shares of stock in the corporation? A. The agency let us know when we was terminated.

Q. I see. I'll show you, Fred, in a file, folder, which bears the number Plaintiffs' Exhibit 2-A and has your name on it, a copy of a stock certificate with No. 22 on it, your

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name, and it states it's for ten shares. Have you ever seen that stock certificate before? A. I don't believe I have.

Q. No? And on the bottom of it there's a warning which on the original certificate is printed in red. Have you ever read that or had anyone read it to you? A. No.

Q. On the back of it there is printed a notice of restriction on transfer. Have you ever read that or had anyone read it to you? A. No.

Q. Did you offer any of your shares of stock for sale? A. Yes.

Q. Do you remember when you did that? A. I don't remember the date.

Q. Does August 8, 1963, sound right? Is that your signature on the offer to sell in your file that bears that date? A. Yes.

Q. And it says you offered six shares of stock for \$2,500. Is that the amount that you offered them for? Do you remember? A. Yes.

Q. All right. And then afterwards, you got a letter from Superintendent Zollar telling you that no one had offered to purchase your stock, and you could sell the six shares for that amount?

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A. Yes.

Q. Do you remember that? A. Yes.

Q. Now, I'm going to show you a document in your file, Mr. Burson, that's on Duchesne County letterhead, and it looks like a stock power, and it says that you're selling six shares of stock to R. Earl Dillman and purports to bear your signature at the bottom. Did you sign that instrument? A. Yes.

Q. Was it all filled out like that when you signed it? A. I'm not sure.

Q. Well, can you remember whether it was or wasn't; or just can't you remember at all? A. I don't remember.

Q. Do you remember what your condition was at the

time you signed that? Were you sober at that time? A. Well, I don't know. I don't remember.

Q. You don't remember signing it at all? A. Right now I can't remember the--that particular piece of paper.

Q. I see. Down here in the lower left-hand corner it said it was signed, sealed, and delivered in the presence of John B. Gale. Do you remember going down before John Gale and signing some papers? A. No. I can't remember when I had that deal with Dillman.

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I don't remember.

Q. Well, is that your signature on the stock power? A. Yes, it is.

Q. All right. Now, also in relation to that sale there is a document entitled, "Affidavit," and it says that you received \$2,500 cash for six shares from R. Earl Dillman. Is that your signature on that document? A. Yes.

Q. Did you receive \$2,500 cash from Mr. Dillman? A. Why, no.

Q. What did you receive from Mr. Dillman? A. I got \$1,000 and two cars.

Q. What kind of cars were they? A. '56 Ford--two '56 Fords.

Q. Two '56 Fords. The document says that it was signed and notarized by Mr. Dick Bastian. Do you remember signing that in the presence of Mr. Bastian? A. Yes.

Q. Was it all filled out when you signed it? A. Yes.

Q. How many shares were you selling to Mr. Dillman, if you remember? A. It was supposed to have been five. I pointed it out to him.

Q. You pointed out that it was supposed to be five?

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A. Yes.

Q. When you signed that document, did it say six shares? Or did it say five shares? A. I believe it said six. I told--

Q. You think it said six? A. I told him that it was supposed to be for five, though.

Q. Did they say anything to you about that? A. Well, he said, "Let it go." And then--

Q. All right. Where were you when you signed that piece of paper? A. Jet Chevrolet.

Q. Do you remember whether you were sober at that time? A. Yes, I was sober.

Q. You were sober then. All right. The next document I want to call your attention to is a stock certificate for four shares. It has your name on it. Did you ever see that stock certificate? A. No.

Q. Did you offer those four shares for sale? A. Yes.

Q. Do you remember how much you offered them for? A. \$500 a share.

Q. \$500 a share, or \$2,000; is that right? A. Yes.

Q. Then did you subsequently sell them to someone?

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A. Yes.

Q. Who did you sell them to? A. Jack Turner, BLI Trailer Court.

Q. Jack Turner of BLI Trailer Court. What did you get when you sold those four shares to Jack Turner? A. I got a trailer house, and then I can't remember how much cash I got.

Q. Did you get some cash? A. Yes.

Q. There is an affidavit here that says you got \$500 for one share sold to Sewell Massey or Ora Massey as joint tenants. Do you know what that's all about? A. Yes, Sewell had that made out.

Q. You know Sewell Massey? A. Yes, I owed him some money--borrowed some money for him. So he had that made out as security.

Q. But you didn't ever actually transfer the one share to Sewell? A. No.

Q. I see. Then later on, did he release you from that? A. Yes.

Q. Then the next document is another affidavit, and it says this time that you're selling four shares to BLI Trailer Court. Is that the transaction you were just telling me about?

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A. Yes.

Q. It says you got \$2,000. Did you get \$2,000? A. No.

Q. Was that affidavit filled out when you signed it? A. Yes.

Q. And it says it was signed in the presence of John Gale. Did you go down to see Mr. Gale at that time? A. Yes.

Q. Who runs BLI Trailer Court? A. Jack Turner.

Q. Was Mr. Turner with you when you went down to see Mr. Gale? A. His boy, I think.

Q. Mr. Turner's boy? A. Yes.

Q. What's his name? A. I don't know it.

Q. You don't know? A. His first name.

Q. When you got down there to sign that piece of paper, did you have any discussion in the presence of Mr. Gale about what you were getting for your stock? A. I don't--don't recall any then.

Q. You say you don't recall any then. Did you have any discussion at any time with him about it?

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A. Well, the next day I borrowed some money on that trailer from the bank.

* * * *

Q. (By Mr. Nielson) Did you have a conversation with Mr. Gale at that time? A. Yes. We wanted to get a car. We got a loan on a car from the bank--or, on the trailer.

Q. And that was to buy a car? A. Yes.

Q. I see. Well, we won't go into that any further, Mr. Burson. So you signed those papers in the presence of Mr. Gale? And were you sober at that time, Mr. Burson? A. Yes.

* * * *

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CROSS-EXAMINATION BY MR. KLEMM

Q. You spend quite a bit of time in jail, don't you, Mr. Burson? A. Yes.

Q. You said that you got your stock when you were terminated. Do you know when that was? What's your understanding of when you were terminated? A. No, I can't remember exactly when it was.

Q. At least, it was before you got your stock, is that right? A. Yes.

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Q. Or was it at the time you got your stock? A. Pardon?

Q. Was it at the time you got your stock, or before that time? A. I--about the time I got the stocks, I guess.

Q. Now, Mr. Burson, you're satisfied with that sale that you made to Turner, aren't you? A. Yes.

Q. You're not complaining about that now, are you? A.

No.

Q. You didn't sue Mr. Turner, did you? A. No.

Q. The real case here is a case against Mr. Bastian, isn't it? A. Yes.

Q. Or Mr. Dillman? (Witness nods head in the affirmative.)

Q. And that's what you're complaining about, isn't it? A. Yes.

Q. You feel you got cheated by those gentlemen? Is that correct? A. Yes.

Q. Now, I think you testified in your prior testimony, I think Mr. Nielson pointed out that your affidavit stated that you got 2,500 shares--\$2,500 cash for six shares of stock

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from Mr. Dillman, but then I think you testified you didn't get \$2,500 cash; is that correct? A. Yes. I didn't get it.

Q. So you were lying in this affidavit, weren't you? When you made this affidavit, you said you got \$2,500 cash, and you didn't? So the affidavit was not true, was it? A. No.

Q. And you did the same thing on the other affidavit, didn't you? You said you got a certain amount of cash, and you didn't get it? So you were lying on that one, weren't you? A. Yes. If that's what it says.

MR. KLEMM: That's all.

REDIRECT EXAMINATION BY MR. NIELSON

Q. Mr. Burson, when you signed those two affidavits that Mr. Klemm referred to, did anyone have you raise your hand and put you under oath? A. No.

Q. Did you feel at that time that you were cheating anyone? A. Pardon?

* * * *

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Q. (By Mr. Nielson) Did you understand my question? My question was did you think that you were cheating anyone at the time you signed those affidavits? A. No.

Q. Did you think you were lying to anyone at that time? A. No.

Q. Do you know what an affidavit is? A. I don't know

the pronunciation of the word.

Q. You don't know--well, put it in your own words, Mr. Burson, any way you'd like to explain it to me. Well, can you explain to me what an affidavit is? A. I guess it's a piece of paper making a deal.

Q. It's a piece of paper making a deal? Anything else about it that you understand? A. What?

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Q. Anything else about an affidavit that you understand?

A. No.

Q. When you went down to see Mr. Gale and have that first affidavit notarized, did he--let me make sure I'm all right here.. The second time when you sold to Jack Turner, did Mr. Gale tell you that you shouldn't sell the stock? A. No.

Q. And the first time when you signed the stock power in the presence of Mr. Gale, did he tell you at that time you shouldn't sell your stock? A. No.

Q. Did anyone tell you you shouldn't sell your stock? A. No. Not that I recall.

Q. Did anyone ever explain to you what that stock was all about and what it represented? A. No.

Q. Have you ever owned any stock before, Mr. Burson? A. No.

MR. NIELSON: That's all.

CROSS-EXAMINATION BY MR. BERTOCH

Q. Mr. Burson, isn't it true that when you signed the affidavit and the stock power in front of Mr. Gale, that he asked you how much you were getting for the stock, and you told

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him \$500 a share; isn't that true? A. Yes.

MR. BERTOCH: That's all.

RECROSS-EXAMINATION BY MR. KLEMM

Q. Let me ask one more question.

MR. NIELSON: Will you step back up there, Fred?

Q. (By Mr. Klemm) Mr. Burson, you said you never owned any stock before? Is that correct? A. No.

Q. Didn't you own two shares of stock in two other corporations? A. Oh, yes.

Q. You owned some in the Range Company? A. Yes.

Q. And the Sheep Company, didn't you? A. Yes. That didn't dawn on me.

MR. KLEMM: That's all.

MR. NIELSON: Call Rex Curry.

REGINALD ORAN CURRY, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

THE CLERK: Will you please state your name.

THE WITNESS: My name is Reginald Oran Curry.

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DIRECT EXAMINATION BY MR. NIELSON

Q. Mr. Curry, are you commonly known as Rex Curry? A. Yes, I am.

Q. Are you a member of the--let me ask you first, where do you live? A. I live at Roosevelt, Utah.

Q. Are you a member of the mixed blood group of the Uintah and Ouray Reservation? A. Yes, I am.

Q. Was Mr. Oran Curry who testified yesterday your father? A. He is.

Q. Did you receive ten shares of stock in the Ute Distribution Corporation? A. Yes, I did.

Q. Have you ever sold that stock, Mr. Curry? A. No, sir.

Q. And you're not a plaintiff in this action either, are you? A. I am not.

Q. How are you employed, Mr. Curry? A. I'm employed by the Ute Indian Tribe.

Q. Of the Uintah and Ouray Indian Reservation? A. Of the Uintah and Ouray Indian Reservation at Fort Duchesne.

Q. What do you do in your work, Mr. Curry?

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A. Presently I'm an administrative officer for the Ute Indian Tribe.

Q. Could you describe for me what that work entails?

A. Oh, it entails the supervision of the office personnel, the fish and game board. I am liaison officer between the Ute Indian Tribe and the Bureau of Indian Affairs of the State and the federal governments and other things that I'm assigned to do by the Tribal Business Committee.

Q. How long have you been working in that capacity? A. Since July of 1967.

Q. What did you do before that? A. I was the resource director of the Ute Indian Tribe before that.

Q. Maybe you could tell us what you did in that capacity and how long you had been serving in that capacity. A. I had been serving in that capacity for a number of years. I don't know exactly how many, but my capacity in that position was to work with the resources of the tribe as liaison between the Ute Indian Tribe and the Bureau of Indian Affairs and other governments and helping in the acquisition of lands, leasing of lands, this type of work, working with water rights belonging to the Ute Indian Tribe for their protection and advisory to the business committee.

Q. Is it fair to say, Mr. Curry, that in your work both in your present capacity and in your former job as director

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of resources that you work very closely with the agency? A. Yes, sir, this is true.

Q. Do you always work rather closely with the tribal officials, including the tribal attorney? A. Yes, I do.

Q. Mr. Curry, were you working in that capacity at the time Public Law 671 was being drafted and during the time of its enactment? A. I was. My title at that time I think was executive secretary. They changed the titles around, but I had essentially the same assignments.

Q. Actually, you went back to Washington and testified before the Congressional committees at the time the law was being enacted, didn't you? A. I did.

Q. And you were also in attendance down at Fort Duchesne when hearings were held with the mixed bloods out there? A. Yes, I was.

Q. Maybe you can tell us who was out there at that time to meet with the mixed bloods. A. The representative of -- Senator Watkins came at one time. And I don't recall his

name, I think it was Richard Cardall, but I'm not sure. It was one of his administrative assistants that came to Fort Duchesne.

Q. Were there representatives of the Bureau of Indian Affairs

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there at that time also? A. They were.

Q. Now, Mr. Curry, in your work do you acquire a familiarity with what's going on in and around the Indian agency, and the practices of the agency relative to the Indian laws, and in particular Public Law 671? A. This is part of my responsibility, yes.

Q. Mr. Curry, I'm going to show you what has been identified in these proceedings as Plaintiffs' Exhibit 42-A, which is a letter on the letterhead of the United States Department of Interior addressed to Superintendent Zollar and attached to the letter is another letter from the United States Department of Interior, office of the secretary, addressed to Mr. Zollar, dated January 13, 1961, and I'll ask you if you're familiar with those two letters. Maybe to save time, Mr. Curry, let's just turn to the second letter, and I'll direct your attention to a particular part of it. If you'd take a look at the paragraph at the bottom of the page, I'll ask you if you are familiar with either that letter or its contents. A. I'm familiar with the--I don't remember that particular letter. I may have seen it. But I'm familiar with the content of this, as I was at the trial that was held in this building at that time concerning this matter.

Q. Now, when you say the trial, are you referring to the trial of the case entitled, "Sprouse v. Zollar?"

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A. Yes.

Q. And that trial involved certain questions relative to the sale of stock in the range companies, didn't it? A. This is true.

Q. I'll read, Mr. Curry--

* * *

Q. (By Mr. Nielson) Mr. Curry, in your work out there with the tribe, was it your impression or understanding that the purpose of the advertising requirements in the sale of

stock was to insure that the members of the tribe, including

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both the mixed blood and full blood members, were to be given the first opportunity to purchase any of that stock? A. This is my understanding, yes, sir.

Q. How did you acquire that understanding? A. By reading the portion of Public Law 671. The statute that is under discussion here provides in part that stock will be offered in a particular manner prescribed by the Secretary of the Interior.

Q. Did you ever have occasion to discuss that subject matter with either Superintendent Zollar or Adelyn Logan or anyone else over at the agency? A. Yes. I have discussed it with Mr. Zollar.

Q. Is your impression in any way related to those discussions which you had with personnel at the agency? A. Would you repeat that question?

Q. Well, it was rather poorly phrased. Was your understanding relative to the requirements of the advertising in any way derived from the discussions you may have had with Superintendent Zollar? A. No. My discussions were from reading the statute itself. My impressions of what was to be the requirements were derived from a reading of the statute.

Q. I see. Now, Mr. Curry, I'm going to show you another exhibit that's been identified here in these proceedings as Plaintiffs' Exhibit 42-B, which is a letter on the United

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States Department of Interior stationery addressed to Mr. Zollar and signed by the area director, George Hedden, it looks like. Have you ever seen that letter before? A. I don't recall ever seeing this letter.

* * * *

Q. (By Mr. Nielson) Now, Mr. Curry, along about 1962, Public Law 671 was amended; are you aware of that fact? A. Yes, sir.

Q. Did you have anything to do with the preparation or recommendation of amendments to Public Law 671? A. Yes, sir.

Q. I'm going to show you an exhibit which is identified as Plaintiffs' Exhibit No. 33, and I'll ask you to look at that letter and tell me if you're familiar with the contents, the

subject matter of the letter. A. I don't know about that. I've never seen that particular letter, but I know about the contents, the amendment.

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Q. Well, Mr. Curry, at that time did you have any knowledge of any problems relative to the Ute Distribution Corporation stock being pledged for minor obligations, minor debts, and things of that sort? A. May I answer by telling what I know?

Q. Well, answer the question as best you can. A. I was called by Mr. James Hall, the county attorney at one time, asking if they could levy on the stock shares. I immediately contacted Mr. John Boyden, because we felt that this would be a way of taking those shares of stock away without getting full value for them. Mr. Boyden took this up with the Ute Distribution Corporation or the Affiliated Utes; and from this was the outgrowth of this amendment that came, because we knew that there were people that would have levied on the stock if they had the chance.

Q. Did you ever at any time discuss that situation or that problem with either Superintendent Zollar or Adelyn Logan or anyone down at the agency? A. I don't recall that I did. I discussed it with Mr. Boyden.

Q. I see. Were you aware, Mr. Curry, during this period of time, of any complaints which were made to members of Congress or anyone else relative to irregularities in relation to the sale of Ute Distribution Corporation stock? A. I was not aware of complaints to Congress. I was aware

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of complaints that were made to me.

Q. Complaints were made to you? A. Yes, sir.

Q. Who raised those complaints? A. Anita Reyes for one, and Ezelda Hendricks.

Q. I'll show you, Mr. Curry, Exhibits 65-A and 65-B, which are letters to Senators Wallace F. Bennett and Frank E. Moss, respectively, by Mr. Sam R. Bumgarner. I'll just ask you to look at those letters and ask you if you were aware of the fact that those letters or letters similar to those had been addressed to Congressmen. A. I don't know about these letters, no, sir.

* * * * *

Q. (By Mr. Nielson) Mr. Curry, I'll show you now an exhibit which has been identified as Plaintiffs' Exhibit No. 54, which purports to be a letter by yourself addressed to Superintendent Zollar. I'll ask you to look at that letter and tell me if you recognize it as being your own. A. I wrote this letter, yes, sir.

Q. The letter bears what date? A. November 5, 1963.

Q. Without reading the contents of the letter, because they've already been read in these proceedings to the Court, but this letter does relate to the general problem of sale of Ute Distribution stock for used automobiles and similar type transactions, does it not? A. It does.

Q. Maybe you could tell me, Mr. Curry, what prompted you to write this letter. A. I was prompted for several reasons. Of course, they are listed in the letter. One of them was I was informed about the management of the assets of the tribe, which is part of my responsibility, and as a consultant with the tribal

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business committee, if these stocks were indiscriminately sold. You see, there were 4,900 shares, and there's a possibility that if every person owned 100 shares of stock, we could have 4,900 people we would be dealing with. I wrote the letter to the superintendent because I felt that some of the people were being taken advantage of by accepting automobiles in exchange for stock, due to the fact that we did not know the value of the automobile, that I felt in my own mind that cash should have been posted in the agency office. Of course, that may not have been a requirement, but it's my own opinion that the agency should have demanded that the cash be placed in escrow at the agency office for these people that were selling their stock.

Q. Did you ever get a reply to that letter, Mr. Curry? A. Not in writing, no, sir.

Q. Did you get any other type of reply? A. I called Mrs. Logan, and she gave me essentially the information that is written on the side.

Q. In the margin? A. In the margin. Marginal note.

Q. How long after you wrote the letter would you have received that information? A. Oh, I would think it would be a month or so after.

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Q. Now, Mr. Curry, I'm going to show you another letter. It appears to be a form letter, Plaintiffs' Exhibit No.

62, and this also purports to be your letter, and it's dated two days later than the one we just looked at; November 7, 1963. I'll ask you to look at that and tell me if in fact that is your letter. A. It is. It's my signature, yes, sir.

Q. Who was that letter mailed to, Mr. Curry, if you recall? A. LaVera Pikutark.

Q. Were there other such letters mailed out by you?

A. We mailed them to several people.

Q. But it wasn't a blanket mailing to all of the mixed bloods? A. No, I think we mailed those to those that had offered their stock at that particular time.

Q. Now, the letter indicates, Mr. Curry, that--well, I'll just read a paragraph, if I may, your Honor. It says: "We do want to point out to you, however, that a sale for cash is much more desirable than accepting equipment or an automobile on the purchase price of your stock, as the purchase price on equipment and an automobile is in many instances marked up higher than if you were paying on a cash deal. "If you haven't already committed your stock to someone, it might be to your advantage to wait until

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after the 12th of November to see what the tribe might have in mind." By that time, Mr. Curry, did the tribe consider the possibility of purchasing these shares of stock which had been offered for sale? A. They considered them on two different occasions.

Q. What was their decision on those two occasions?

A. They came to no decision.

Q. Was there any particular reason why they came to no decision? A. There were several reasons. First of all, we didn't know how much the stock was worth. This is one of the primary reasons. We didn't know how much the stock was worth. Secondly, we didn't have any money in our budget at that particular time for the purchase of stock. Possibly we could have requested an advance from the Government for this. Whether they would have granted it, I don't know. Let's see, 490 shares of stock times 5. That would have been over \$2 million if we had enough money to purchase all of them at the same value that some of them were advertised at, it would have taken an outlay of over \$2 million. Thirdly, there was not agreement among the members of the business committee themselves as to whether we should purchase or whether we shouldn't. I think, as I remember,

one of the gentlemen that

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are in the audience, Mr. Max D. Pruce, supported me in my recommendation that we buy the stock. But one other member of the tribal business committee didn't want to buy it. And so it was never settled.

Q. Now, you've indicated, Mr. Curry, that you didn't know what the stock was worth. You were fairly familiar, however, with the assets that the stock represented, were you not?

A. Yes. I didn't sell my stock, for the reason I felt that they were valuable.

Q. Well, but you did know what assets the stock represented control over? A. Yes. I had a general idea.

Q. And did you also know what the value of those assets were? A. No. Well, I knew they were valuable, but how valuable is something else. I knew they were unadjudicated claims against the Government. I knew there was oil and gas on the Reservation. I knew there was asphalt on the Reservation. I knew there was gilsonite on the Reservation. I knew that there was coal on the Reservation. Shortly--in 1952 the Government returned to the Ute Indian Tribe 36,000 acres of classified coal land that was on the Reservation, subsurface rights which underlies national forest. I knew it was there. I knew there was oil shale, but the amount and extent, the quantitative and

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qualitative analysis of these things had never been determined.

Q. To your knowledge, Mr. Curry, was there ever an attempt to appraise those assets by the tribe or the agency or anyone else? A. We made requests of the Geological Survey to see if they might could tell us something about the quantity and the quality of the minerals that we had; but they replied that they had--did not have sufficient personnel to do this type of work. Again, later, we tried to get a, what we called an emergency grant from the Government under one of the grant programs, to have an appraisal, or at least an inventory made of the minerals on the Reservation, and this was denied by the ARA, the Area Rehabilitation Administration, on the grounds that the money was expected to be used in projects that would produce immediate labor to relieve the labor situation, because this may be a long time, and it didn't produce immediately jobs for people. It was disapproved on those grounds.

Q. Now, Mr. Curry, in your work as the realty officer

of the tribe and in working with these particular assets, did you feel that it would have been possible to have appraised the minerals?

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Q. (By Mr. Nielson) You may answer, Mr. Curry. A. I know, that in the claims of the Ute Indian Tribe versus the United States, in many claims that the appraisals were made by certain firms and were accepted in evidence in the courts.

* * * * *

Q. (By Mr. Nielson) Now, at the time the Public Law 671 was being enacted and the mixed bloods were in the process of being terminated from federal supervision, were you familiar with the program which was--or, let me withdraw that and rephrase it, if I may. Were you familiar with the fact that the University of Utah had been employed to look into the background of the mixed bloods who were about to be terminated? A. I'd heard this. I'd heard that the University of Utah had been employed by the Bureau of Indian Affairs to do this.

Q. Did you ever talk with any of the personnel who were conducting that study? A. I talked to many of the personnel of the University of Utah, the Bureau of Indian Services; but I don't know exactly which ones made the studies. No, I do not know that.

Q. As a mixed blood yourself, did any of these personnel ever come around and talk to you?

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A. I don't recall.

Q. I'll direct your attention to what appears to be a form letter. It's identified as Plaintiffs' Exhibit No. 32, and this particular one is addressed to Mr. Thomas LaRose, Sr. Did you receive that type of a letter during that period of time? It has the date July 14, 1958. A. This is a form letter of the Bureau of Indian Affairs, and I expect that I received one, along with other people.

Q. I'll direct your attention to the last page of the letter, the last paragraph that refers to that University of Utah program. Do you remember receiving that type of a letter

discussing that subject matter? A. I don't remember that paragraph. If it was a form letter, I would have received one.

Q. Well, Mr. Curry, are you aware of the personnel from the University of Utah who were conducting that particular survey coming out and talking to you or any other members of the mixed blood group? A. I don't remember them talking to me. I cannot answer for other people.

Q. Well, I realize that. My question is whether you are aware that any of them did. A. No, I wasn't aware.

Q. All right. Thank you. Now, there has been some reference in this trial, Mr. Curry, to an educational campaign which

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had been conducted among the people out in the Uintah Basin at the time of the amendment to Public Law 671. Are you aware of any such educational program? A. No, I'm not.

Q. Are you aware of any efforts which were made by the United States to go out and talk to the white people in the Uintah Basin about the problems the mixed bloods might have with credit and otherwise? A. I was aware of one--wasn't at this particular time. It was several years prior to that. It had to do with a different program before the--

Q. Did it have anything to do with Public Law 671? A. No, sir.

Q. All right. You're not aware of any such efforts? A. No, I'm not aware of any.

Q. Now, you've indicated, Mr. Curry, that you worked rather closely with Mr. John Boyden. I'll show you what purports to be a letter of Mr. Boyden dated July 22, 1959, and I'll ask you to direct your attention in particular to the second paragraph of that letter, and I'll ask you some questions about it after you've had a chance to look at it. A. I don't remember seeing that letter.

Q. Were you familiar with the subject matter which Mr. Boyden discusses in that second paragraph? A. Mr. Boyden didn't tell me too much about the affairs

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between himself and the Ute Distribution Corporation, because I was working with the tribe, which was a different group.

Q. Then you're not familiar with that? A. I'm not.

Q. All right. Now, you were the resources director of the tribe, so I take it that you were fairly familiar with the

real property assets of the tribe. Would that be a fair statement, Mr. Curry?

* * * *

A. Yes, I was fairly acquainted with the assets of the tribe.

Q. (By Mr. Nielson) Do you know offhand, Mr. Curry, how many acres of mineral lands the tribe owned at the time we're referring to, 1959 and thereafter, while Public Law 671 was being put into effect? A. Only generally. I can't say right to the acre, of course; but we had, I think, more than a million acres of minerals, or lands in which the tribe owns minerals. You must remember that there are many different types of lands in the Uintah Basin in which the tribe owns surface rights, they own the subsurface, there are lands in which they own the surface and do not own the subsurface. There are lands in which they own the subsurface, but do not

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own the surface. Some of these subsurface are owned by the State of Utah. Some are owned by individuals. There are many types of lands. So generally speaking, I know they were quite extensive.

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Q. (By Mr. Nielson) Mr. Murray, are you familiar with the amount of money derived through these sales that were being prosecuted on behalf of the Ute Tribe before the Indian Claims Commission? A. Total amount?

Q. Yes. A. Of course, what period of time are you talking about now?

Q. I'm talking about starting with August 27, 1954, through August 27, 1964. A. 1954 to 1964? They are quite extensive. Some of those claims--there was a number of claims--some of them were before the Indian Claims Commission. Some of them are before the Court of Claims of the United States. They were not all before the Claims Commission. And the amounts, of course, I don't have at my fingertips, but I do know that dividend payments--I wouldn't say "dividend"--I would say distributions were made before the Ute Distribution Corporation was organized, between that period of time.

Q. Well, just take the ones that were-- A. And there

were some since that time.

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Q. Are you familiar with the amounts that were paid subsequent to the organization of the Ute Distribution Corporation? A. Well, I think from 1961, the figures are about \$710 per share. 1961 to date. To now.

Q. And you, of course, are a stockholder in the Ute Distribution Corporation? A. I'm a stockholder.

Q. So you received those payments? A. Yes.

Q. And I think they were about \$710 per share? A. Something like this, yes, sir.

Q. Do you recall when those payments were made and what the particular amounts were? A. They were made over a period of different years. Since 1961. Some of those payments that were made were derived from claims against the Government. Some of them were income from oil and gas leases, and bonuses and royalty on oil and gas leases.

Q. Do you recall when they were made, the payments? A. Well, I'd have to go back to my income tax returns to find those, but I don't recall them by years, but I know about the total amount.

Q. You're just able to recall the total. All right, Mr. Curry, were you also familiar with the plan for the distribution

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of the assets of the mixed blood members of the Ute Indian Tribe, which was adopted pursuant to Public Law 671? A. Yes, sir.

* * *

Q. (By Mr. Nielson) Mr. Curry, did the tribe ever undertake to appraise any of the assets which were distributed to the mixed blood members pursuant to Public Law 671?

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* * *

A. Are you referring to the tribe--the mixed blood members of

the tribe, or the full blood members of the tribe?

Q. (By Mr. Nielson) I'm referring to the mixed blood members, and I have reference to any of the corporations, including-- A. The mixed blood members of the tribe organized what was known as Affiliated Ute Citizens of Utah. That group hired a firm from Colorado to make an appraisal of the land holdings in the two corporation that were formed.

Q. Now, which two corporations? A. The Antelope Sheep Range Company and Rock Creek Cattle Range Company.

Q. Now, were you here when Mrs. Logan testified? A. I was.

Q. Do you recall her testimony relative to certain assets, surface rights, being appraised? A. I remember that she testified to the fact that an appraisal had been made.

Q. Was the appraisal she had reference to the one you've just described? A. Yes, sir.

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Q. And it was in fact conducted by the tribe and not the agency? A. It was conducted by the Affiliated Ute Citizens of the State of Utah, who are the mixed blood group.

MR. NIELSON: You may cross-examine.

CROSS-EXAMINATION BY MR. BERTOCH

Q. Just a couple of questions, Mr. Curry. Is it true, Mr. Curry, that there was some distribution in 1961 to holders of UDC stock? A. In 1961?

Q. Yes. A. I don't know if it was 1961, but between 1961 and now there have been distributions made.

Q. Do you recall whether or not there was one in 1962? A. I don't recall them as to years.

Q. I see. A. But I think that there has been a distribution made every year.

Q. You think there has been one made every year, is that correct? A. I think there's been one made every year.

Q. At least, you're quite certain that there was one made prior to 1964, is that right? A. 1964? I think there's been one made--let's see, 1961--

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I'm not sure exactly the years that they were made, but I know that practically every year that there was some made, in differ-

ent amounts. Some were large amounts, and some were small amounts. Some were from oil and gas income. Others was from judgment funds that were received by the tribe.

Q. Excuse me. Have you finished? So there have been several different distributions of different amounts between 1961 and '64, is that correct? A. Yes, sir.

Q. Do you recall, Mr. Curry, when the stockholder received a distribution, was it received in a check, do you recall, or a draft of some kind? A. It was received in a draft.

Q. Do you recall whether or not there was any communication or transmittal letter with the draft explaining what it was for? A. Well, generally speaking, there was a--it was in two parts. The part that was negotiable and the part to keep for your records. It indicated that this amount of money was moneys that was derived from funds that was received by the Ute Distribution Corporation. Then at the end of the year, for income tax purposes, they sent a notice as to where these moneys derived from, because certain funds were exempt from taxation, and certain other funds were not.

Q. So everyone, every stockholder who received one of those

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drafts and one of these communications, if he read it, would be conscious of the fact that he was being paid this amount because he owned this stock; is that correct? A. This is true.

Q. Is it true, Mr. Curry, that you have earnestly discouraged your father, Oran Curry, not to sell his stock? A. I didn't talk to him very much about that. I told him the stock was valuable. But I didn't even know when he had made his exchanges or sold--

Q. Would it be fair to say that you did discourage him from selling his stock? A. Well, I told everybody that would hear me that these stocks were valuable.

Q. Including your father, isn't that correct? A. I think I told him that they were valuable.

MR. BERTOCH: That's all. Thank you.

CROSS-EXAMINATION BY MR. KLEMM

Q. Mr. Curry, did you ever tell anybody that in an open meeting of the mixed bloods? A. I never went to meeting

of the mixed bloods.

Q. You're familiar with almost all of the 490 mixed bloods, aren't you? A. I know most of them, yes.

Q. You had occasion to tell a number of them about this,

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didn't you? A. I wrote several of them letters, as it was indicated here that are in evidence, that I told some of them.

Q. Mr. Curry, do you know of any requirement--that is, out of anywhere--that would require the Bureau of Indian Affairs to make an appraisal on the assets of the Ute Distribution Corporation or the assets that might sometime--at some time give benefits or proceeds to the stockholders? A. You mean a legal requirement or a moral requirement?

Q. Do you know any statutory requirement, any regulation, any directive? A. No. On the others--on the Rock Creek Cattle Range Company and Antelope Sheep Range Company, I think the--I don't know whether this was a state requirement or not, but I think they had to make a statement as to the value of the stocks.

Q. It's your testimony that the appraisals done on those two corporations, on the land, surface values, were paid for by the mixed bloods? A. Yes.

Q. As a matter of fact, there was quite a difference between what made up the range and cattle corporation and that that made up the Ute Distribution Corporation, wasn't there?

A. Yes. There is a difference, because--the range land--

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Let me explain this, if I may--the cattle corporation and the Antelope Sheep Range Company were appraised on the basis of animal units. And one of the reasons for this was to establish the value as to that one share of stock in the Rock Creek Cattle Range Company would be equal to the value of the share of stock in the Antelope Sheep Range Company. In other words, so that if these members wanted to exchange a share of stock in the sheep company to one of the other members that had a share of stock in the cattle company, they could do so, and it would be a fair exchange. For instance, if you'll read the articles of incorporation, they were set up also on an animal unit basis. Each individual member of the Antelope Sheep Range Company was authorized to run sheep on the lands, 30 animal units, sheep units, 30 sheep units in the summer and 30 sheep units in the

winter, which amounted to 60 total sheep units. In the Rock Creek Cattle Range Company, they were allowed to run two and a half cows, if you can divide a cow in half, for a period of six months, or 15 cow months on the basis of four sheep to a cow was equal to 60 sheep units. On that basis. An appraisal was made, and they came out with a figure of \$246,000 for the Antelope Sheep Range Company and \$246,000 for the Rock Creek Cattle Range Company.

Q. All right. The property that went into these corporations was property that was--that could be divided; isn't that the

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case? A. These were assets that could be divided, yes, sir.

Q. These were assets that had an equitable--or, could be equitably and practicably divided between the people-- A. Yes, sir.

Q. --who were involved, between the mixed bloods and the full bloods; isn't that co-rect? A. Now--

Q. And actually--go ahead. A. You said it could be divided between the mixed bloods and the full bloods.

Q. As a group. A. They were divided between the mixed bloods and the full bloods before the appraisals were made. They were divided on the basis of animal units at that time. And after that first division, the Affiliated Ute Citizens of the State of Utah obtained this appraisal for their own use in setting up these two corporations. This was done after the division between the full floods and the mixed bloods initially.

Q. So the appraisals were done in connection with their own use. They weren't done in connection with the sale of the stock, though, were they? A. Well, they were done to put a value on the stock in the event that they exchanged them among themselves or sold them back and forth to each other. They were to be equal, as I

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understand. The reasoning there was that one sheep stock would equal one cattle stock. And they divided up the range between the sheep and the cattle, so this would come out equally.

Q. They didn't do this for the purpose of selling their stock to the tribe, did they? A. Well, they did for the purpose of establishing the value for the members, to know what

the value was.

Q. And this was done by the mixed blood group? A. Mixed blood group.

Q. Now, Mr. Curry, will you explain to us the circumstances that gave rise to Public Law 671? A. Well, how far back do you want me to go?

Q. Let's start with the judgments against the Government in 1951. A. Well, you'll have to go back farther than that.

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Q. (By Mr. Klemm) Mr. Curry, you're familiar with the passage of Public Law 671, are you not? A. Yes, sir.

Q. And you served on some of the committees that were picked to draft that legislation? A. This is true.

Q. And you and the committee and Mr. Boyden drafted this legislation and then as a matter of fact submitted it to Congress; is that also correct? A. Yes, sir.

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Q. And at the time that it was submitted, there was a hearing in Washington, and you testified at that hearing? A. Yes, sir.

Q. Now, Mr. Russell Cuch I think testified at that hearing? A. Russel Cuch.

Q. And there were others. Mr. Harris testified, and they went back there and testified in favor of this bill, and subsequently it was passed, wasn't it? A. Yes, sir.

Q. And right after the Act was passed, the rolls were published, were they not? A. Yes, sir.

Q. And these were the rolls that--well, there were two rolls, one of the mixed bloods and one of the full bloods; is that correct? A. There were four rolls.

THE COURT: They were published?

THE WITNESS: There were four rolls published. Two were preliminary rolls, and two were final rolls.

THE COURT: Where were they published?

THE WITNESS: In the Federal Register.

THE COURT: Don't I take judicial notice of that?

MR. KLEMM: Yes, your Honor, I'm sure you may.

THE COURT: I think counsel can more expeditiously call to my attention the matters of which I can take judicial

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notice than to take the time in a very general way of examining a witness on it. Direct your attention to something beyond things that I can take judicial notice of and that counsel can advise me on.

Q. (By Mr. Klemm) All right. In connection with this, then, committees were formed to divide the profit of the tribe; isn't that correct? A. They were not committees. The Ute Indian Tribal Business Committee were not--was not formed at that time. It was in existence already. The Ute--the Affiliated Utes of the State of Utah were organized for that purpose on a temporary basis, to effect the Act. So the board of directors of the Affiliated Utes of the State of Utah and the Ute Tribal Business Committee, with the help and direction from the Bureau of Indian Affairs, met on several occasions to effect the division of the assets.

Q. And they were talking at those meetings about the assets that were susceptible to equitable and practicable distribution; is that correct? A. They talked about those, and they talked about the other assets.

Q. They also had some cash assets, and those were easy to divide, weren't they? A. They had cash assets, yes, sir.

Q. But did they make any attempt to divide the assets that

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made up the money that went to the Ute Distribution Corporation? A. This is the way it was done. They divided the lands, they divided the timbers which were appraised just prior to that by the Ute Indian Tribe. The timber state had been appraised shortly before that time. And they divided the lands, and they also sold certain land that was authorized under Section 9 of the Public Law 671, and they divided the proceeds from those sales. They also sold certain of those lands to members of the tribe, both the full blood group and the mixed blood group that had what we call assignments. They were allowed to purchase

under the Act. And those sales, the money from those, was divided. So they divided all the cash assets between the two groups. They divided up the land on the basis of animal units.

Q. What did they do with the oil and gas interests, sub-surface interests? A. The oil and gas interests were designated as those that could not be--were not divisible at that time. And so they were under the statute managed jointly by the Ute Indian Tribe and the Affiliated Utes until they went out of existence; and now they are managed jointly by the Ute Indian Tribe and the Ute Distribution Corporation.

Q. And what about the claims that were against the Government?

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A. The claims, moneys against the Government, as the awards were made, were divided by the Bureau of Indian Affairs in accordance with the number of people that were on the final roll.

Q. Now, to your knowledge, when was this division of assets completed? When had it been complete? A. Well, the division of assets is still not complete. We are still making oil and gas leases; and if money comes in, we divided it. And it is still being managed jointly.

Q. As to those assets, the tribe, the mixed bloods jointly managed them; but about the assets susceptible to equitable and practicable distribution, when was that complete? A. The statute provided that they should make the division within a period of, I think, a year, or the Secretary would be authorized to divide the lands. So the assets as far as they were able to were divided between the mixed bloods and the full blood group shortly after the passage of the Act. I don't recall exactly the date, but it wasn't too very long after this.

Q. Well, are you aware of the date of the termination proclamation that's been published in the Federal Register? A. Would you state that again, please?

Q. Are you aware of the existence of the proclamation, the termination proclamation that has been published in the Federal Register?

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A. Yes, sir.

Q. Do you remember the date that that was published?

A. It was published effective as of August 27, 1961, as to the individuals.

Q. And was the division completed by that time? A. I think the--those assets that were--could be divided were completed at that time.

Q. Now, Mr.-- A. I mean, as far as between the full blood group and the mixed blood group.

Q. Now, Mr. Curry, do you know of any leases involving oil shale now on the Reservation? A. Yes, sir.

Q. Are there such leases in existence? A. Yes, sir.

Q. That involve oil shale itself? A. Oh, you mean oil shale? No. Not oil shale, I thought you meant oil sales.

Q. You're talking about oil wells, aren't you? A. Oil wells, yes.

Q. But are there any leases involving oil shale? A. Not to my knowledge.

Q. Do you know if there are any coal mines on the Reservation? A. Yes, sir.

Q. How many?

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A. There are not any in production right now, but the Bureau of Indian Affairs mined one of the coal mines for many years.

Q. When was the last time you had any producing coal mines on the Reservation? A. In about the year 1934.

Q. Now, you said you were familiar with certain amendments that were made to the Act in 1962. Is that correct? A. Yes, sir.

Q. Do you know the purpose of that amendment, that 1962 amendment? A. There were amendments made to protect the people that had possibly mortgaged their property, and also to define the enrollment procedure to the tribe.

Q. Well, there were other--there were two amendments made at the same time, weren't there? A. Yes, sir.

Q. And one of those amendments was for the protection of the mixed bloods; isn't that correct? A. Yes, sir.

Q. Now, I think you mentioned some complaints that were made by Mrs. Reyos. She came to you and complained? A. Yes, sir.

Q. Isn't it true that the nature of her complaint was that she had been cheated in selling her stock? That's correct,

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isn't it? A. Her complaint was this. The other complaint was different than this.

Q. Well, did it pertain to the stock? A. It pertained to the stock, yes, sir.

Q. What was it? A. Mrs. Hendricks came to me to ask me if she had in fact sold her mineral right--

Q. I'm talking about Mrs. Reyes. You say Mrs. Reyes. Her complaint-- A. They were both together. They came to me together. They were together when they came. Mrs. Reyes and Mrs. Hendricks came to me together, on the same day.

Q. All right. So Mrs. Reyes was complaining about the fact that she had been cheated? A. Yes, sir.

Q. And Mrs. Hendricks came to you about some mineral rights? A. Mrs. Hendricks inquired if she had in fact sold her mineral rights. She indicated that according to her understanding, she had retained her mineral rights, but sold only what might accrue in the future from claims against the Government.

Q. You explained that to her? A. I explained to her that in selling her stock, she had sold all of her rights, as I understood.

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Q. Now, on occasion you mailed a letter to some of the mixed bloods, those that advertised their stock to try to dissuade them from selling that stock, didn't you? A. Yes, sir.

Q. Because you thought maybe the tribe might still buy it? A. Yes, sir.

Q. But the tribe didn't buy it? A. They didn't buy it.

Q. They didn't buy it because they had a disagreement between some of the members of the tribal business council?

A. That was part of the reason, yes, sir.

Q. Some of them thought the stock was worth that much. Some said it wasn't. Isn't that correct? A. Some of them thought it was worth more, and some--if we could buy it, that we should buy it for management purposes. And one or two of them didn't want to buy it because they indicated that we had--or, the tribe has separated from this group, and they shouldn't get involved with them again.

Q. So there were some politics? A. There were some politics mixed up in there.

Q. Now-- A. They exercised some--

* * * *

the Q. (By Mr. Klemm) Actually, there was no way to know

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true value of the stock was there at that time. A. We didn't know the value of the stock excepting that we knew that there were unliquidated claims against the Government, and right at the present time there were two that have not been paid that are still pending. There was a number of them at that time that hadn't been paid.

Q. So there was some way to determine the value? A. As far as claims were concerned, we knew what had been asked, but we didn't know what the Court would award. These are two different things.

MR. KLEMM: I think that's all.

FURTHER CROSS-EXAMINATION BY MR. BERTOCH

Q. I just have one more question. Did I understand from your previous testimony that you thought perhaps it would be a good idea if the tribe had borrowed money from the United States Government and bought these shares of stock; is that right? A. Not borrowed. I thought it would be good if they used some of their own funds in the treasury to purchase these stocks.

Q. Right. And you felt, however, that it might take as much as \$2 million; is that correct? A. Well, the stock shares had been offered in various amounts. Some of them were higher, some were lower.

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The second time I went back to the tribe was after we learned that some of these people were getting less than they had advertised for. And so we felt that the tribe was not being treated fairly, if someone lowered his stock and it was not offered to the tribe, because the regulation provided that every time they sold, if they sold--they could not take less. If they attempted to take less, then it had to be readvertised again.

Q. When was it that you first considered this possibility of getting-- A. Of using money in the treasury to buy the stock?

Q. Was that in 1963 approximately, or 1964, or what?
A. Well, it was about the time that I wrote that letter.

Q. It was a little before any sales were made, is that right, that you knew of? A. Well, we had thought about it before the sales. We knew that they were coming, and we had talked about it generally.

Q. As you said a little while ago, you thought it might take in the neighborhood of \$2 million; is that right?
A. Well, I didn't have that figure down until after we saw what they were advertising for.

Q. Then tell me about your figuring it out. You figured out what? That it would take--perhaps a fair figure would be \$2 million; is that about right?

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A. Well, see, some of these stocks were being offered for fantastic prices, they thought, at that time.

Q. I'm just interested in what your conclusion was on it. That's of some importance to us, Mr. Curry. And the \$2 million figure you mentioned, I just want to know what that represented. A. What I was doing was just a rule of thumb. They were being advertised generally for \$500 per share. So I multiplied five times 490 people, or \$5,000 times 490 people, and came out.

Q. And it would have been your recommendation at that time that the tribe take \$2 million from its treasury, or approximately that, and purchase the stock; is that correct?

A. My recommendation would have been that they should purchase these stocks, if they were determined to sell them, the tribe should buy them.

Q. And at approximately that price-- A. That's the price they were being advertised for generally.

MR. BERTOCH: All right. Thank you.

MR. PAULSON: Your Honor, I have a couple of questions.

CROSS-EXAMINATION BY MR. PAULSON

Q. Mr. Curry, are you acquainted with the twelve bellwethers plaintiffs in this action? A. No, I'm not. If you gave me their names, I would

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probably know who they are.

Q. You stated that you did attempt to discourage all who would listen to you on the sale of their stock? A. Yes, sir.

Q. Let me quickly ask you, if you know this person and if you did in fact attempt to discourage this person from the sale of his stock. Leatha Wepsock? A. No, I didn't talk to her.

Q. Are you acquainted with her? A. Yes, sir.

Q. Melvin Reed. A. No, I didn't talk to Melvin Reed.

Q. Glen Reed? A. I didn't talk to Melvin Reed.

Q. Charles T. Reed? A. I didn't talk to Charles T. Reed.

Q. Leonard R. Burson? A. I didn't talk to Leonard R. Burson.

Q. Marguerite Hendricks? A. I didn't talk to Marguerite Hendricks.

Q. Fred Burson? A. I didn't talk to Fred Burson.

Q. Joseph Arthur Workman? A. Well, I figured that he knew as much about the value of the stocks as I did. Joseph Arthur Workman is one of the

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board of directors of the Affiliated Utes.

Q. Well, did you have a conversation with him concerning-- A. I've talked with him about the value of these stocks, yes.

Q. Did you attempt to discourage him from selling them? A. I told him they were valuable.

Q. The same as you told your father? A. The same.

Q. Louise Allen Case? A. I didn't talk to Louise Allen Case.

Q. Stewart Eugene Reed? A. No, I didn't talk to him.

Q. You have testified that you did discourage your father, Oran F. Curry? A. Yes.

Q. And your brother, Richard Henry Curry? A. I didn't talk to Richard.

Q. You did not talk to your brother about it? A. No.

Q. At all? A. Not at all.

Q. Never discussed it with him? A. Never discussed it.

Q. Do you live in the same town? A. No. No, we don't.

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Q. Did you at that time? A. No.

Q. Marguerite Murray, who testified this morning--I beg your pardon--you testified that there was a Mrs. Hendricks who came in and complained, apparently having a misunderstanding about having sold her mineral rights. That was Ezelda Hendricks? A. That was Ezelda Hendricks.

Q. That wasn't Marguerite? A. Not Marguerite. It was Ezelda.

MR. PAULSON: That's all.

REDIRECT EXAMINATION BY MR. NIELSON

Q. Mr. Curry, in response to Mr. Klemm's question, you referred to the claims against the United States that have not been paid. Have those claims been reduced to an amount? A. One of them has been reduced to an amount.

Q. Will you tell us what the amount is? A. I'm not sure of the amount, but I think it's slightly over \$3 million.

Q. And how about the other one? A. The other one is not a claim as such before the commission. It is a bill that has been introduced in Congress for reimbursement to the Ute Indian Tribe and the Affiliated Ute Citizens of the State of Utah.

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Q. How much is being requested in that bill? A. The bill itself involves two things. One is the moneys that were used by the United States in an irrigation project. The unpaid balance plus interest from 1914, when the Government took those funds out of the Utah tribal treasury and used them for this irrigation project. The total amount is slightly over \$4 million.

Q. All right. Now, when Mr. Klemm asked you about the publication of the termination proclamation on August 27, 1961, you answered as my notes indicate, that you understood that it was the termination date as to the individual; could you explain for me what you meant by the use of that phrase? A. In my mind, I was referring back to the statute that said on that date they would not be accorded services from the United States, such as Hospital service, and this is the other types of services, according to Indians, because of their status as Indians, and that on that date they would begin to pay taxes on their profits, Seven years from the time of the enactment--

of the enactment. There was a tax exemption on their properties. And that date, it was correlated with the expiration of that tax exemption on properties. However, I felt that the Government had not terminated their supervision over the oil and gas, because they still exercised supervision over those.

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Q. When did you understand that they terminated supervision over those properties? A. Well, they still exercise supervision over the--the area director has to prove oil and gas leases right at the present time, and will until the legislation is paid.

Q. So at any rate, the significance to you of 1961 is with reference to the tax exemption? A. The tax exemption and these two things--there was tax exemption that expired on that date on properties that the members of the--what we term Affiliated Utes or mixed bloods, services, such as public health service, services of coming to the agency for other types of help, many of these types of services were not accorded to them after that date.

Q. All right. Now, in response to Mr. Klemm's question, you indicated that there are no oil shale leases presently in existence on the Reservation. Have there been any offers by individuals to lease for oil shale? A. Not to my knowledge there hasn't been. Of course, Mrs. Logan may testify to that, because any request for oil shale leases would go to the superintendent's office.

Q. So you wouldn't be aware of that? A. I wouldn't be aware of it until the superintendent sent us a letter advising us.

Q. Now, with respect to oil and gas, are you aware of any oil and gas lease offers which have been rejected by the tribe?

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A. Yes, sir.

Q. Could you describe those for us? A. The--I might state that I have been sick for some time, and I returned to work on the 5th of July, and I was not at work from the 20th of March until the 5th of July. On June 1 and June 15, oil and gas leases were opened for sale bidding by the Bureau of Indian Affairs on two different sales. The June 1 sale was approved by

both the Ute Distribution Corporation and the Ute Indian Tribe, as to all of the tracts that were advertised, on the recommendation of the U. S. Geological Survey. On the June 15 sale, I understand from information received from Mrs. Logan that the Ute Distribution Corporation approved all of the leases that were advertised. The Ute Tribe, however, rejected ten units from leasing.

Q. Do you have any idea how many acres they might have involved? A. Well, there are ten sections. They are in sections, so there would be approximately 6,000 acres.

Q. Are you acquainted with any other offers to lease or purchase mineral lands on the Reservation which have been rejected by the tribe or Ute Distribution Corporation? A. Yes, sir.

Q. Will you tell us about those? A. Well, there are some near Duchesne that were rejected about three years ago.

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Q. For what type of minerals? A. Oil and gas.

Q. All right. Anything else? A. Oh, there have been applications that have come in for mineral leasing. However, right at the present time there is a resolution in existence approved by the area office which reserves oil and gas--mineral prospecting--I'm referring to metallic minerals, such as gold and this type--is reserved to the members of the Ute Distribution Corporation that have not sold their original stock and to members of the tribe to prospect. They have a right to prospect until November of this year. At that time that preferential right to prospect at that time expires. Providing they come in and get a permit from the agency, they can go out and prospect. If they find a mineral, then they are to report this to the tribe, with a location of the area. And then it is the responsibility of the tribe and the Ute Distribution Corporation to develop this, and the finder receives a royalty of two and a half per cent.

Q. And that represents-- A. If it is leased.

Q. And that represents another right that the mixed blood loses when he sells his stock? A. If he sells his stock, he does not have--does not have any right in any of these minerals. He doesn't have a right

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to prospect. He doesn't have a right to receive a prospecting

permit under these resolutions.

MR. NIELSON: That's all I have.

MR. BERTOCH: No questions.

RE-CROSS-EXAMINATION BY MR. KLEMM

Q. The services that you lost on August 27, 1961, were those that you would otherwise have been entitled to as an Indian; is that correct? A. Yes.

MR. KLEMM: That's all.

* * * * *

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RALPH D. COWAN, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

THE CLERK: Please state your full name.

THE WITNESS: Ralph D. Cowan.

DIRECT EXAMINATION BY MR. NIELSON

Q. Where do you reside, Mr. Cowan? A. 2950 East Millcreek Road in Salt Lake County, Utah.

Q. How are you employed? A. I'm vice president and trust officer of the First Security Bank of Utah, National Association.

Q. Were you employed in that capacity during the period from about 1954 through the present? A. Yes.

Q. Are you familiar, Mr. Cowan, with the stock transfer agreement that was entered into between First Security Bank and Ute Distribution Corporation? A. Yes, I am.

Q. In fact, you had a hand in the negotiation of that

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contract, didn't you? A. That was primarily Mr. Thomas, but I was familiar with what was going on, yes.

Q. So you would also be familiar with what the intent was in the preparation of that instrument? A. Yes.

Q. Mr. Cowan, I'll direct your attention to what has been identified in these proceedings as Plaintiffs' Exhibit No. 18, which purports to be a copy of the stock transfer agreement between Ute Distribution and First Security Bank and ask you if that is in fact the document which was entered into. A. This appears to be the document, yes.

Q. And it's true, is it not, Mr. Cowan, that under the terms of this instrument, First Security Bank obligated itself to keep the books of account for the corporation in accordance with usual bookkeeping and accounting practices, to receive funds, to issue checks, to receive and hold documents, generally conduct the business for Ute Distribution Corporation? A. The agreement so provides.

Q. Now, it's also true, is it not, Mr. Cowan, that it was the intent in entering into that agreement that First Security Bank would assume the obligation to see that all transfers of Ute Distribution Corporation stock were properly made? A. That would be true, yes.

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Q. In fact, you wrote a letter to Mr. A. E. Harris, who was the executive director of the Affiliated Ute Citizens in January of 1958 in which you specifically represented to Mr. Harris that First Security would assume that obligation? A. That letter I don't recall offhand.

Q. Well, I'll show you the letter, Mr. Harris. It's been identified in these proceedings as Plaintiffs' Exhibit No. 19. I'll ask you to look at the letter and see if you recall that particular document. A. That letter has my signature. I don't recall in particular, but I'm sure I have written them.

Q. And the letter says, among other things: "This would mean that we would be responsible for keeping a record of all outstanding stock certificates. We would handle all transfers of stock, whether by reason of sale or because of the death of the owner, and it would be our duty to see that these transfers were properly made. Because of the technical nature, the transfer of stock would be handled by our trust department in Salt Lake City, where we have people especially trained for this type of work. However, there is no reason why the certificates could not be presented to our Roosevelt office for forwarding to Salt Lake City for transfer." That's what you told Mr. Harris at that time, didn't you?

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A. That's what the letter states, yes.

Q. Then it was specifically claimed at the time you entered into that agreement that your Roosevelt office would have a role to play in relation to the transfer procedures, wouldn't it? A. As a forwarding agent, you might say.

Q. Well, isn't it also true, Mr. Cowan, that under the stock transfer agreement the bank specifically obligated itself to maintain an agent down in Duchesne County? A. That wouldn't be a transfer agent. That would be just an office to, you might say, receive items.

Q. But it was contemplated and specifically agreed that you would have an office out there for people to consult with-- A. Through whom contacts could be made, yes.

Q. And they were in fact your agents? A. Only I would say for carrying out our instructions and for receiving stock. This stock transfer work was all done in Salt Lake City.

Q. But they were agents for purposes of this agreement? A. I think I could say that.

Q. And it was also indicated in your letter that we've just referred to, Exhibit No. 12, that in handling this transfer work, the bank would be acting on behalf of the individual stockholders, wouldn't it?

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A. We were acting on behalf of the Ute Distribution Corporation as its agent.

Q. Well, isn't it true, Mr. Cowan, that on the second page of your letter you said as follows: "It was mentioned above that some stockholders might wish to sell their shares or assign their grazing rights. Our office at Roosevelt might be of service in this connection, particularly in the case of some stockholders who do not live in the area. The corporation would not be involved in this, as the bank would be acting for the individual stockholders."

* * * *

A. If it was in the letter, I must have made the representation.

Q. (By Mr. Nielson) All right. So then it was extended in this regard--

* * * *

Q. (By Mr. Nielson) Now, about this same time, Mr. Cowan, the bank was also negotiating a trust agreement with the Affiliated Ute Citizens and the United States relative to the mixed bloods, wasn't it? A. That is correct, yes.

Q. In fact, that trust agreement was in a process of negotiation and drafting for a period of some five years; isn't that right? A. It was a considerable length of time. I don't remember the total length.

Q. I'll show you what has been identified as Plaintiffs' Exhibit 20-C, which is a letter from Glen L. Emmons, the Commissioner of Indian Affairs, to Mr. George S. Eccles, President of First Security Corporation, and attached to that letter is a letter from Mr. George S. Eccles dated December 22, 1955, to the Commissioner of Indian Affairs; and I'll ask you to refer to that document and ask you if that refreshes your recollection any relative to the time when the negotiation actually commenced. A. I don't recall ever having seen copies of this correspondence.

Q. Well, the authenticity of the correspondence has been

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admitted, Mr. Cowan; and my question is whether this simply helps you any as to the time when the negotiation was going on.

Q. This would have probably been the initial contact.

* * *

Q. (By Mr. Nielson) In the process of drafting and negotiation of the instrument, you worked rather closely with Mr. John Boyden, who was the attorney for the tribe? A. Yes.

Q. And you know, do you not, that the trust agreement itself was revised several times by Mr. Boyden, at the suggestion of the Indian Department and others? A. There were revisions made, I'm sure, from the original draft. My recollection is that the original draft was taken from one that had been used in a similar case with another

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bank.

Q. I see. It's fair to say that this was a very carefully drafted instrument, wasn't it? A. I think so, yes.

Q. Now, let me ask you this, Mr. Cowan. Initially, the

trust agreement--well, let me show you the trust agreement, first of all, Mr. Cowan. It's been identified in these proceedings as Plaintiffs' Exhibit 17-A, and I'll ask you to just quickly look at it and tell me if that is in fact the trust agreement which was entered into. A. That appears to be a correct copy of the trust agreement, yes.

Q. And it's dated--well, it doesn't bear the date, except to indicate that it was 1960. A. That must have been correct, yes.

Q. All right. Now, initially when you were drafting this instrument, it was initially known as the Affiliated Ute Indian Minors' Trust Agreement. Do you recall that? A. Not specifically, no.

Q. In that event, Mr. Cowan, I'll show you what has been marked for identification purposes as Plaintiffs' proposed Exhibit No. 111, a letter from Mr. Llewellyn Kingsley--or, a letter to Mr. Llewellyn Kingsley, acting superintendent of the Uintah and Ouray Agency, from Mr. Haverland, the area director, and it has attached to it a document reviewing some

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suggested changes in the instrument, from Glen L. Emmons, the Commissioner. And attached to that letter is a document entitled, "Second Draft, July 10, 1959, Affiliated Ute Indian Minors' Trust Agreement," and I'll ask you if you recognize that document.

* * * *

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Q. (By Mr. Nielson) Do you have any knowledge, Mr. Cowan, as to why the title of the instrument was changed from the Minors' Trust to simply the Affiliated Ute Indian Trust Agreement? A. Not that I recall.

Q. Well, isn't it true, Mr. Cowan, that the reason was because you contemplated the persons who were not minors could also become subject to this trust instrument? A. I do know this, that some who were not minors eventually became beneficiaries.

Q. And it's true that that was contemplated when the trust document was actually signed, wasn't it? A. It's indicated in the agreement, yes.

Q. And in fact, the trust instrument complained that persons who were not initially designated as trust beneficiaries might also become subject to its terms? A. That's my recollection.

tion.

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Q. And in fact, the preamble to the instrument so states, when it says that the instrument is being, and I'm quoting--I'm not quoting yet--well, I'll just read the first part of it. "This agreement, made and entered into between the Secretary of the Interior of the United States (hereinafter referred to as the 'Trustor'), acting pursuant to Public Law 671, 83rd Congress, 2nd Session, as amended, and the plan for termination of federal supervision over the mixed blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah, approved under the provisions of Section 13 of said law, and on behalf of the beneficiaries named in Schedule A attached hereto and made a part hereof..." That's what it says, isn't it?

* * * *

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Q. (By Mr. Nielson) All right. So it's fair to say then, isn't it, Mr. Cowan, that in drafting this instrument and--

THE COURT: By "this instrument" you mean--

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Q. (By Mr. Nielson) Exhibit 17-A, the final trust document. And having particular reference to the language I just referred to, where it says that it will be for the Affiliated Ute Citizens and the beneficiaries named on Schedule A, that it was contemplated that persons who weren't on Schedule A could become subject to the trust? A. Not unless it was--they were added specifically as beneficiaries.

Q. Now, turning over to paragraph 5, that clause of the trust specifically provides for a procedure whereby such persons could be added to the trust, doesn't it?

* * * *

Q. (By Mr. Nielson) All right. Now, when additional persons were added to the trust agreement, Mr. Cowan, it was by way of someone, usually the superintendent at the Uintah and

Ouray Reservation, simply writing you a letter and telling you that they thought a particular person ought to be subject

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to the trust? A. It would be a transfer of his assets to the trust.

Q. A formal document transferring his assets to the trust? A. It's my recollection.

Q. Mr. Cowan, I'm going to show you Plaintiffs' Exhibit No. 25, which has been received in these proceedings, and this is a letter from Mr. Zollar--or, from the area director to Mr. Zollar referring to William Henry Taylor, mixed blood member 440, and requesting that Mr. Taylor be placed on Schedule A of the trust. You received documents such as that relative to Mr. Taylor and others, didn't you? A. My recollection is that Mr. Taylor was the last one added to the trust.

Q. And this is the document by which he was added to the trust? A. Not necessarily.

Q. Do you have another document which places Mr. Taylor under the trust? A. I couldn't say.

Q. Well, could you search your records and see if you could find one?

* * * *

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Q. (By Mr. Nielson) After you've finished your testimony here this morning, could we ask you to look in your records and see if you find such a document on Mr. Taylor?

THE COURT: All right. The witness may make an effort to find any further document which you say may have implemented the addition of Taylor to the trust.

THE WITNESS: I think we at least have records showing when his assets were transferred, because we would have set those up on our books.

THE COURT: That's what I have in mind.

THE WITNESS: Yes.

THE COURT: You believe in addition to a provision that his name should be added, there would be required some transfer

of assets so you could administer them as part of the trust?

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THE WITNESS: That is correct.

THE COURT: And what we want to do is find that document transferring assets or further implementing that transfer.

THE WITNESS: We'll see what we can find.

THE COURT: Very good.

Q. (By Mr. Nielson) Now, Mr. Cowan, later on, in July of 1959, you received a letter from Mr. John Boyden instructing you that the board of directors of Ute Distribution Corporation had adopted a resolution requesting that you emphasize to the stockholders of the corporation that they should not sell their stock and further instructing you that you should hold the stock of each of the mixed bloods because of certain unfortunate experiences which they had had in the past. Is that true? Do you remember that letter? A. Yes. I did receive such a letter.

Q. Did you in fact hold the stock for all of the mixed bloods? A. That is correct.

Q. Until what date, Mr. Cowan? A. Well, we released no certificates except those that have been sold, until the date of their termination of supervision by the Government. Since that date, whenever there has been a request for a stock certificate, we have delivered it, but until there has been a question we were still holding

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it.

Q. You're still holding some of these certificates?

A. If there has been no request for delivery, yes.

Q. Did you have any agreement pursuant to which those stock certificates were being held, other than Mr. Boyden's letter? A. Other than Mr. Boyden's letter, I don't believe there was ever anything written.

Q. And it was your understanding at that time, was it not, Mr. Cowan, that those stock certificates were also to be held subject to the trust? A. Only a part of them. Only those certificates that belonged to those who were beneficiaries of the trust.

Q. None of the others at all? A. None of the others.

Q. Now, Mr. Cowan, initially that was your impression, was it not? A. No.

Q. Mr. Cowan, I'm going to direct your attention to a document which has been marked for identification purposes as Plaintiffs' Exhibit No. 118, which purports to be a copy of a letter written by you. I'll ask you to look at that letter and tell me if that is in fact your letter. A. This is a letter that I wrote to Mr. Zollar, yes.

Q. It's dated July 18, 1962, and you mailed that on or about that date?

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A. Probably the same day.

Q. All right. The letter in the second paragraph reads as follows. I'll ask you to read it along with--

* * * *

Q. (By Mr. Nielson) The second paragraph: "The question has now arisen as to whether it was the intent to transfer to our bank as trustee the Ute Distribution Corporation stock in order that we might receive for the beneficiaries distributions made by that corporation. We note that paragraph 2 on page 2 of the agreement contemplates that additional assets may be transferred and that Article V provides that the trustee shall have the power in its sole discretion to receive and accept additional funds, assets, securities, and other properties. As you know, since the establishment of the trust, several distributions have been made by the Ute Distribution Corporation, and we have accepted these distributions for the trust beneficiaries." You were referring at that time, were you not, to the additional securities which you were holding pursuant to Mr. Boyden's letter? A. Only those for the beneficiaries of the trust. That is all that's referred to in that letter. In other words, there

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were only about 175 roughly out of 490 who were beneficiaries of the trust. It's those certificates I was referring to in the letter.

Q. Well, the trust document itself provides, does it not, that you were to receive the income from the stock held for

the persons on Schedule A? A. Correct.

Q. So when you referred here to the question as to whether you should receive the income on the additional securities, you couldn't be referring to that stock, could you, Mr. Cowan? A. I'm referring to the stock that belonged to those on Schedule A.

Q. Even though the trust instrument itself had already provided that you were to receive that income? A. The difficulty was, as my recollection is, that under Schedule A, specifically listed two companies, but did not list Ute Distribution Corporation on the original Schedule A, for the question arose as to whether it was the intention to also use Ute Distribution, and I'm sure it was the result it was.

Q. At least, there was no question in your mind at the time you wrote this letter that paragraph V of the trust instrument contemplated that other securities for other persons could be held pursuant to that trust?

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A. Yes.

* * *

Q. (By Mr. Nielson) Could you describe for me, Mr. Cowan, what the nature of your holding of these Ute Distribution Corporation stock certificates for the persons who were not on Schedule A was? How would you describe that? A. Merely had them in a file in our vault. That was all. All of the certificates were kept on file in our vault.

Q. Not pursuant to any formal agreement of any sort?

A. The instructions pursuant to that letter from John Boyden.

Q. Now, those stock certificates amounted to 4,900 shares, did they not? A. Right. That is correct.

Q. Is it customary at your bank, Mr. Cowan, to hold that volume of securities without entering into some formal arrangement relative to your holding them? A. We had the letter from John Boyden, and were acting as agent for Ute Distribution Corporation.

Q. Of course, Mr. Boyden wasn't the owner of that stock, was he? A. No, but he was the attorney for Ute Distribution

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Corporation at that time.

Q. Well, now, Mr. Cowan, had an individual stockholder made a request of you to receive his stock at any time prior to August 27, 1964, would you have given him his stock? A. No, we did not.

Q. In fact, some of the stockholders asked you for their stock, didn't they? A. That is correct.

Q. And you refused to give it to them? A. That is correct.

Q. And in particular, Mr. Glen McMurdock asked you for his stock? Right? A. I don't recall what particular individuals asked for it.

Q. Mr. McMurdock, on March 7 of 1964, wrote a rather long letter dated March 7, 1964, and identified as Plaintiffs' Exhibit 48 demanding that he be given his stock? Do you remember that letter? A. Not offhand, no.

Q. Well, its authenticity has been admitted, and it is addressed to you. A. Probably if it's addressed to me, I probably saw it.

Q. And you didn't give him his stock, did you? A. No.

MR. NIELSON: We direct the Court's attention to

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48-Z for that purpose, your Honor.

Q. (By Mr. Nielson) Well, now, if you didn't give Mr. McMurdock and the others their stock, it's pretty clear in your mind, isn't it, that you were holding them subject to some sort of trust arrangement? A. Not in our mind. We were holding them as agents for the Ute Distribution Corporation, pursuant to our acting as agents for them.

Q. Did you understand that they were the owners of those stock shares? A. No. But they were the corporation we were acting as agents for. We were bound to follow their instructions.

Q. Even though a particular owner of the stock requested his certificate, you felt that you were bound to hold them? A. Pursuant to the instructions we had from the Ute Distribution Corporation.

Q. And you're referring to the letter of Mr. Boyden? A. Primarily. That was the original--that was the written instructions he'd left, yes.

Q. I'll ask you, Mr. Cowan, what the distinction was in your mind between the letter of Mr. Boyden asking you to hold the stock certificates and the letters you received from time to time asking to place additional mixed bloods on Schedule A? A.

I would say that. We were holding the stock certificates

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as agents for the Ute Distribution Corporation, and we were subject to their instructions.

Q. Mr. Cowan, is there anything in the stock transfer agreement with Ute Distribution Corporation which authorizes you to hold such stock certificates for individual stockholders?

A. Not specifically, no. But I believe there is instructions that we are to follow instructions from the council for the corporation.

Q. Now, you act as stock transfer agent for various other corporations, don't you, Mr. Cowan? A. Yes.

Q. Is it your custom in your business to hold the stock certificates of individual stockholders at the request of the corporation? A. No. Well, excuse me. I should say--if we would receive those instructions, yes. For example, we had one recently where we were requested not to transfer stock, and we were acting for the corporation. We carried out their instructions, whatever they may be.

Q. That was a problem of transfer, as opposed to merely holding the stockholders' property? A. The only thing I wish to emphasize, we carry out the instructions of the principal for whom we are acting as agent.

Q. Mr. Cowan, going back to the beginning of the transfers.

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which you took care of for the Ute Distribution Corporation and its stockholders, do you recall that at some time in 1963 you received a request from Superintendent Zollars to transfer the stock of a Mrs. Poowegup? A. Not offhand I don't remember.

Q. Well, you remember that somewhere along that time you received what was the first request to transfer stock out of Ute Distribution Corporation? A. Well, there was--there had to be a first request, because we made some transfers.

Q. And do you recall that at that time there was some discussion between you and Superintendent Zollars and the corporation as to what the proper transfer procedures should be? A. Yes. There was discussion as to what procedure should be followed.

Q. And that discussion centered over the requirement of the articles of incorporation and the stock certificates

themselves that a certificate be stamped on the stock certificate by Superintendent Zollar relative to the completion of the advertising requirements? A. There were some technical requirements, I remember, yes.

Q. And you found that a little bit awkward because of the fact you were holding the stock certificates in your vault, didn't you?

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A. We had to work out a procedure, yes, that would still take care of it.

Q. I'll show you what has been identified herein as Plaintiffs' Exhibit No. 45, which is a letter, a copy of a letter dated September 23, 1963, to Mrs. Lena D. Sixkiller, President of Ute Distribution Corporation, and that purports to bear your signature. Do you recall writing that letter? A. Yes, I did write it.

Q. And this is in fact the letter whereby you set up the procedure for transferring the Ute Distribution stock, isn't it? A. Correct, yes.

Q. And it's true, is it not, that in that letter you instructed Mrs. Sixkiller and Superintendent Zollar by the copy of that letter that went to him that the bank will accept a separate certificate and a separate stock power in lieu of the endorsement of the stock certificate itself and the stamping of the superintendent's certificate relative to advertising on the stock instrument itself? A. I think that's true, yes.

Q. And you authorized both of those changes in the procedure? A. That was the agreement that was worked out as to procedure to be followed, yes.

Q. And you did that, even though you knew that the articles of incorporation specifically provided that there should be

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no transfers unless the stock certificate itself was endorsed? You knew that, didn't you, Mr. Cowan? A. Probably.

Q. And you knew that that restriction was stamped right on the stock certificates themselves, because you held them in your vault? A. We held them in the vault, yes.

Q. And you knew that? A. I must have if it's on there.

Q. And you knew that the regulations and the articles

of incorporation of Ute Distribution Corporation required that the superintendent's certificate be stamped on the stock certificate? A. I must have.

Q. Was there any reason why you authorized a deviation from those procedures? A. Yes.

Q. What was the reason? A. We, in endeavoring to protect the--under the instructions we received from the Ute Distribution Corporation, Mr. Boyden's letter, we were endeavoring to protect those who were the owners of the certificate.

Q. You were endeavoring to protect the owners of the certificate? A. Yes.

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Q. Now, Mr. Cowan, you were aware, also, were you not, of that warning that was printed in red letters on each stock certificate? A. Yes.

Q. And you understood that that warning was there for the protection of the individual stockholder, didn't you? A. That's one of the protections, yes.

Q. Did you ever give one of those stock certificates to a stockholder requesting a transfer prior to the time the transfer was permitted? A. I never gave one out. It may be that some of them had seen it when they come into the bank. I don't recall.

Q. You don't recall having given one to an Indian? A. No, we didn't. Not prior to August--what date that was--the termination date, of the restrictions.

Q. Didn't it ever occur to you that the requirement of the endorsement of the certificate itself might be for the purpose of insuring that that warning be actually communicated to the Indian? A. Well, that's--I guess it's on there in warning to them, yes.

Q. Now, when you adopted this alternative procedure of accepting a separate stock power and a separate certificate, did you also adopt any procedures to see that the Indian got a look at that warning?

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A. Not a look at that particular warning on the stock certificate, no.

Q. Did you ever contact Mr. Gale or Mr. Haslem out in Roosevelt and ask them to read that warning to the Indian before he signed the stock power? A. Not that I recall.

Q. In fact, you didn't do anything at all to see that that warning was conveyed to the Indian, did you? A. Not directly. I would say this, that when they came into the bank and requested their certificates, we had them sit down and talked with them about it, those that came in and asked for them in the bank.

Q. In fact, Mr. Cowan, you even prepared the stock powers that you authorized the use of as an alternative to the endorsement of the certificate? A. That's a printed form, I believe.

Q. Yes. And you supplied it? A. Yes, we supplied the printed form, which is a standard stock power form.

MR. NIELSON: We'll invite the Court's attention to Plaintiffs' Exhibit 46, which is a letter from Mr. Cowan discussing the use of that separate stock power.

Q. (By Mr. Nielson) Now, you were also aware of the regulations of the Secretary of the Interior relative to the advertisement of the stock for sale, were you not?

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A. I believe so.

Q. And you knew that the regulations provided that in the event of a sale the Indian was to receive the same or a greater amount of consideration than the amount that he authorized or, that he had posted the stock for sale? A. In effect, yes.

Q. But yet, having that knowledge, you permitted certain transfers of this stock with the full knowledge that the Indian was receiving automobiles or other types of merchandise in lieu of cash? A. I'm not so sure that I did.

Q. Mr. Cowan, I'm going to show you what has been identified herein as Plaintiffs' Exhibit No. 61-A, which is a set of documents relative to the transfer of stock of Mr. Edmond Van, and I'll ask you if you recognize any of those documents.

A. I don't believe I do recognize any of these documents. These have to do with these were held in our Roosevelt office.

Q. All of those documents were obtained from your Roosevelt office? A. I don't recall having those documents before.

Q. Now, Mr. Cowan, you knew, did you not, that Mr. Gale and Mr. Haslem out in Roosevelt were buying and selling this Ute Distribution Corporation stock? A. As far as I can recall, we

did not know it at that time.

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Q. Did you learn about it later on? A. Yes,

Q. When did you learn? A. I don't recall just when it was.

Q. Was that after this lawsuit was initiated? A. About the same time, I would say.

Q. You also knew, did you not, Mr. Cowan, that the law specifically provided that the Ute Distribution Corporation would not be subject to mortgage, pledge, or hypothecation prior to the time it was actually transferred by the Indian? A. They could not pledge the stock itself in my recollection, but they could assign income that might be--the payments that might be made on the stock.

Q. I'll show you, Mr. Cowan, what has been identified herein as Plaintiffs' Exhibit 60-M, which purports to be a letter in the handwriting of Mr. John Gale addressed to the First Security Bank of Utah, N.A., Box 1289, Salt Lake City, Utah. "Dear Calvin, This letter is your authority to release the assignment I have on the Ute Distribution stock of Glen V. Reed." Did you ever see that letter before? A. I don't recall having seen it.

Q. Calvin is Calvin Anderson? A. That's Calvin Anderson, who is an employee in our trust

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department and is now the assistant trust officer.

Q. All right. Now, I'll show you a letter which is identified as Plaintiffs' Exhibit 60-P, and it purports to be a letter from Calvin Anderson, Administrative Assistant of First Security Bank, to Mr. John Gale, Assistant Manager, and it indicates that--well, I'll just read the letter. "I am in receipt from the Bureau of Indian Affairs an order for transfer of stock in the name of Glen McMurdock, Jr., to the name of Dick E. Bastian. We note from the letter received from the board of directors that Mr. McMurdock has made an assignment of this stock to First Security Bank of Utah, N.A., Roosevelt office. Is this assignment still in force, or can you give us a letter releasing him from this assignment?" Were you aware of that situation? A. I may have been. I don't recall that I was.

Q. Were you aware of the fact that Ute Distribution stock was being assigned to your Roosevelt office? A. All I

could say I remember being aware of is there were assignments from the income of the stock. We asked the Ute Distribution Corporation to keep us advised of those assignments.

Q. Well, this letter says, of course, an "assignment of stock," doesn't it, Mr. Anderson? A. That's what the letter states, yes.

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Q. And you also knew that Mr. Dick Basian was an automobile dealer out there, didn't you? A. I don't know whether I knew it at that time or not. I do--I am aware of it now.

Q. Now, I'm going to show you, Mr. Cowan, a copy of a stock certificate bearing No. 396, identified as Plaintiffs' Exhibit 60-R; and this stock certificate is in the name of Paul Duane Reyos; and on the back of the stock certificate it appears to be endorsed by Paul Duane Reyos, with the signature guaranteed by Mr. Bridges, and it's undated. Did you undertake to see that the advertising requirements were performed in relation to that stock certificate? A. All I can say is that so far as I know, no certificates were delivered until after the termination date; and I don't believe we released any to my knowledge prior to that date.

Q. This particular endorsement is undated. A. That's our practice, not to date endorsements.

Q. Did you ever undertake to determine if that assignment was made before or after the termination date? A. My only recollection is that no certificates were delivered before the termination day.

Q. Attached to the--

THE COURT: Pardon me. Why would assignments always be required to be undated in your practice?

THE WITNESS: Because you have, say, in transferring

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the stock with the transfer agent, if there is a stale date on it. So it's the custom generally not to date them, in order to avoid stale dates.

THE COURT: Well, if actually there was a stale date that would properly hold up the transfer, why shouldn't the fact be known? In other words, if a stale date would raise a question about the matter, why wouldn't the bank be interested in any legitimate question?

THE WITNESS: Well, we look at this from two different standpoints. One standpoint is transfer agent. One standpoint is where we may be owner of the stock. As transfer agent, if the stock comes in to us with an old date on it, we will refuse transfer until we have evidence, for example, that the person is still alive. But--

THE COURT: Then that very question is an integral part of the transaction, whether it's dated or not, isn't it, except you have no way of recognizing or checking up on it if it's not dated?

THE WITNESS: Only except by other material that might be in the files, yes.

THE COURT: I see. And that's a practice that isn't limited to this relationship as a general rule?

THE WITNESS: No. It's a stock. In the trust department it's our practice not to take the certificate. It's just general practice.

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Q. (By Mr. Nielson) Now, Mr. Cowan, attached to that stock certificate of Paul Duane Reyos we have just referred to is a document entitled, "Letter of Commitment," reciting that: "I, the undersigned, Guy E. Davis as trustee for Karen Omera Davis hereby give a firm commitment for the purchase of five shares of Ute Distribution Corporation stock from Paul Duane Reyos at a price agreed upon by 'blank.' Signed by Guy E. Davis." And it is notarized on the date of the 24th of August, 1964. That letter was in fact attached to the stock certificate when it was submitted to you for transfer, wasn't it? A. I have no recollection of that transaction.

* * * *

Q. (By Mr. Nielson) Did you have any such knowledge that commitments were being made prior to the termination date and stock was being submitted for transfer, after August 28-- or, August 27, 1964? A. Not that I recall.

Q. I'll show you a letter identified as Plaintiffs' Exhibit

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64-CC, and this one is addressed to you, Mr. Cowan, from Mr. John B. Gale, Assistant Manager of your Roosevelt office, and it says: "I am returning three stock certificates, two of them made out to B. E. Davis for a total of five shares and one to Marie Stahbery for three shares, which we would like to be transferred back into the names of Clyde R. Murray, this being necessary since their check was returned unpaid. "I would appreciate it if you would take care of this matter at your earliest convenience. If you have any questions in regards to these certificates, please contact me." That is dated August 28, 1964. A. What's the termination date?

MR. BERTOCH: August 27.

A. That would be one day, then, after the termination date.

Q. (By Mr. Nielson) Yes. And it refers to rescinding a stock transfer which had been accomplished before that date, doesn't it? A. That's what it indicates--I mean, it doesn't say that it was accomplished before. Before August 28 it says, doesn't it? Not before August 27.

Q. Well, the letter is dated August 28. A. Right.

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* * * *

Q. (By Mr. Nielson) All right. At the time you received that letter, Mr. Cowan, you knew that Mr. Gale was handling some transactions in that stock, didn't you? A. I must have if I saw the letter, and it was addressed to me.

Q. You also recognized the name Marie Stansbery, didn't you? A. Marie Stansbery? No. I don't recall that name.

Q. Didn't you handle quite a number of transfers for Marie Stansbery? A. I did not handle personally the transfer of the stock.

Q. Well, the records would indicate that? A. The records would indicate to whom transfers were made.

Q. Now, on September 2, 1964, Mr. Cowan, you received, or at least Mr. Anderson, who was in your department, received a letter from Verl Haslem relative to some stock transfers which he indicated he was purposely being a little bit slow about sending in, because there were some additional transfers they wanted to make on those. Do you remember receiving letters of that type? A. Not specifically, no.

* * * *

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Q. (By Mr. Nielson) Now, sometime along in September of 1964, the bank changed the transfer procedure, didn't they, Mr. Cowan, and no longer accepted separate stock powers in a transfer? A. After that time, we started to release certificates upon request. And at that time, then, from that time on, ordinarily the certificate itself would be endorsed, rather than using stock powers, yes.

Q. And now that the Indian was able to have his own stock certificate, you wouldn't accept a separate stock power any more? A. Yes.

* * * *

Q. (By Mr. Nielson) Now, during this period of time, Mr. Cowan, it was the policy of the bank to accept endorsements, stock powers, of persons who were known Indians without requiring a certificate from Superintendent Zollar relative

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to the advertising; is that correct? A. Transfers between-- from a non-Indian to a non-Indian?

Q. Yes. A. We felt, I believe, that the restrictions applied only to those of the mixed blood group, and did not apply to any purchaser from the mixed blood group.

Q. I see. And was that your own interpretation of the law and regulations? A. I don't recall specifically, but I know that was our interpretation. We probably discussed it with John Boyden, or Mr. Morris, who may have been the attorney at that time, but I don't recall the details.

Q. All right. Did you understand, Mr. Cowan, that the purpose for that restriction on transfer was to keep the ownership of that stock in the hands of Indians? A. At least until they were--the Government supervision was terminated.

Q. But you felt, or your department, felt that once the stock had been transferred out of an Indian's hands, there was no necessity to endorse that restriction any more? A. In effect, yes.

MR. NIELSON: All right. You may cross-examine.

CROSS-EXAMINATION BY MR. BERTOCH

Q. Mr. Cowan, were there any ways in which the bank

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undertook to discourage the mixed blood from selling his stock?
A. Yes.

Q. Will you tell me in which ways? A. Well, for example, we had a number of requests for the sale of stock for which we were holding as trustees under this Affiliated Ute Indian Trust Agreement, primarily for the minors. And we did not sell a single share of stock and still have not sold a single share of stock for those who were beneficiaries of the trust. We had one instance where we were considering the sale, because the chap is very elderly and needed money for his support, but he died before any sale was made. Of course, we also discouraged them by holding up the stock certificates in our files; and whenever they came in and talked to us about it, we discouraged them from selling their stock.

Q. Was there any other purpose for holding the shares of stock in your file? A. Yes. John Boyden, and I agreed with him, were fearful that the stock certificates might be lost if they were distributed; and if they were lost, why, we would run into some difficulties in securing duplicates or issuing duplicates. And that was another reason we were holding them.

Q. You were aware of this warning that was on the stock

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certificate discouraging them from selling; is that correct? A. Yes, we were aware of that.

Q. What considerations, if any, justified your view in your mind in retaining the stock certificate, knowing that they would not see this warning unless they came in to the bank and asked to look at their share of stock? A. Well, we felt partially that the retention of the certificate itself would be a deterrent to their sale. It was further understood that the Ute Distribution Corporation was endeavoring through various means to discourage the sale of the stock.

Q. And how did you know that? A. That comes from our contacts with the Ute Distribution Corporation.

Q. I call your attention to Mr. Boyden's letter, which is already in evidence and which has been referred to, and I ask you if this was a factor in your consideration, contributing to balancing your decision, and I'm quoting from this letter from Mr. Boyden to you. "Because of the peculiar nature of this corporation, the board, by way of bylaws or otherwise, contemplates discouraging or prohibiting the mortgaging or pledging of this stock. There is no objection to assigning the proceeds to be derived from the corporation; but to jeopardize the ownership

of the stock may result in very

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unfair practices. You should so advise any attempted borrower or lender." Were you aware that from this letter and other sources that the board itself of UDC was attempting to discourage the people from transferring their stock? A. Yes. We took it that the letter was correct. I mean, what the letter said was true.

Q. Is there any other fact or any other practice which you recommended to Mrs. Sixkiller in your letter of September 23, which is also in evidence, which you believe afforded some protection to the Indian in connection with his dealings? A. I don't recall whether it was in that letter or not, but I know the practice was for an affidavit to be furnished to Mr. Zollar, I believe, who was the superintendent at that time, that they had actually received their consideration for their stock.

Q. Can you tell me whether or not that affidavit grew out of or was a result of this paragraph on page 3 of your letter? This was describing the procedure you recommended in connection with the sale, after the sale to a non-Indian, after the posting. "When he--" That is, the mixed blood. "--has found a buyer, he will furnish the superintendent with evidence satisfactory to the superintendent

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that a sale has been made at a price not less than that indicated in the offer to sell, and will deposit with the superintendent a stock power assigning the shares sold to the purchaser." Did you write that? A. Yes. That was carried out by means, I believe, of furnishing an affidavit to Zollar, the superintendent, that the payment had been received or that the stock had been sold for not less than the price for which it had been offered to the members of the tribe.

Q. Was it your practice to transfer any of this stock without knowing whether or not the affidavit had been received? A. Mr. Zollar, to my recollection, furnished us lists from time to time of instances where the--where their office had approved the transfer on the basis of the affidavits. And it was in effect certified to in the letters that we got from Mr. Zollar. We did not have the affidavits ourselves is my recollection.

Q. He retained the affidavit, but told you that it was in his file; is that correct? A. In effect, yes.

Q. When was it you changed the policy and started permitting the mixed bloods to have their stock certificates? A. After the termination date and the restrictions. When there were no further restrictions on sales.

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Q. That is, when there was no longer a necessity of having this affidavit or of posting, advertising it with the Bureau? A. That is the date on which we changed our practice.

Q. I call your attention again to Plaintiffs' Exhibit 110, which is your letter to Zollar, the superintendent, and I want you to explain what assets that has reference to. A. At the time that we were named as trustee of the Affiliated Ute Indian Trust, there was attached as Schedule A, which listed the assets that were turned over to us. It listed, for example, savings, and stock of a couple of other corporations, but did not list the Ute Distribution Corporation stock. So this letter referred only to stock in Ute Distribution Corporation, which would be held by us or the beneficiaries of the Affiliated Ute Indian Trust.

MR. BERTOCH: That's all the questions I have, your Honor.

MR. PAULSON: No cross-examination as to defendant Murray.

MR. BERTOCH: Mr. Klemm, may I ask one more I just thought of, before I sit down?

Q. (By Mr. Bertoch) Did you ever receive any communication from Mr. Zollar or from the Bureau of Indian Affairs to the effect that there was any irregularity in connection with any of the affidavits which they had examined? A. Not that I recall, no.

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MR. BERTOCH: That's all. Thank you, Mr. Klemm.

CROSS-EXAMINATION BY MR. KLEMM

Q. Mr. Cowan, in the negotiations that went on in the formation of the trust agreement that has been referred to--I believe that's Exhibit 17-A and 17-B--was it ever contemplated

that the bank should become the trustee for all of the mixed blood members of the tribe? A. No.

Q. As a matter of fact, the negotiations were always limited to minors and non compos mentis persons and persons designated by the Secretary to be in need of supervision over their affairs; isn't that correct? A. That's right.

Q. Now, was there any action taken by the bank at the time that one of these minors would reach the age of his majority? A. If they reached the age of their majority prior to the termination date, we continued to hold their stock certificates. Since that time, as they retain their termination date, it's been our practice to turn over to them all the assets.

Q. So they at the age of 21 or 18-- A. Twenty-one. The age of 21 applies for both males and females. Even though they become of age at 18 under the State law, we can hold it until the age of 21 under our agreement with the Secretary of Interior, for both boys and

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girls.

Q. So you turn over all of the assets that are in the trust? A. At the present time I believe that's what we are doing, yes.

Q. Now, what do those assets include? Do those assets include matters other than UDC stock? A. Yes.

Q. What are they? A. Primarily cash or savings accounts. Well, if it's savings accounts, they have them in our name as trustee, and they may transfer it into their name individually and make a transfer over. We've had some cases where we have had some interesting real estate. Primarily cash and Ute Distribution stock.

Q. As a matter of fact, when that trust was formed, you became the trustee over all the property of those particular persons, didn't you? A. In some cases, distributions had been made before our appointment as trustee, and guardians had been appointed and funds had been paid out by the superintendent's office to the guardians. Everything that was on hand at that time was turned over to us.

Q. As to minors? A. As to minors and a few adults.

Q. Now, stock power forms are commonly used in the banking

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industry, aren't they? A. Yes.

Q. And they're used in connection with the transfer of stock? A. Yes.

Q. Now, throughout the time that you were holding this stock for the Ute Distribution Corporation, did you also receive any dividends or any per capita payments that were made on that stock? A. Only for those who were beneficiaries of the Affiliated Ute Indian Trust.

Q. And you didn't receive such payments for the mixed blood himself who was not under the trust? A. That is correct.

MR. KLEMM: Thank you.

REDIRECT EXAMINATION BY MR. NIELSON

Q. Mr. Cowan, did anyone give you any specific instructions to give the mixed bloods their stock after August 27, 1964? A. Not that I recall.

Q. What was your authority for doing that at that date? A. Because of the fact that there were no further restrictions on sale. In other words, as transfer agent we felt that we were obliged to see that these restrictions on sale were complied with; and once those restrictions were removed, we

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weren't bound to police the nature of the transfers to see if those restrictions had been complied with.

Q. I see. A. I might say we still discourage people from selling the stock.

Q. Did you from time to time send stock certificates out to your Roosevelt branch prior to August 27, 1964? A. Yes.

Q. Who did you send them to out there? Anyone in particular? A. Not that I recall. The purpose of that--you see, the certificates were not signed by officers of the corporation when we mailed the transfer. It was necessary to send them out to Roosevelt to get the corporate seal put on the certificates to have them countersigned by the officers of the corporation; and we sent those through our Roosevelt office rather than direct to the Ute Distribution Corporation.

Q. How about the signed certificates, the original stock certificates? A. They were signed and in our possession and had the seal on them.

Q. And when they were signed and in your possession

and had the seal on them, did you ever on any occasion send them to your Roosevelt office? A. Not prior to August 1964, I would say.

Q. Isn't it true, Mr. Cowan, that you sent Mr. Glen Reed's

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stock certificate out to Verl Haslem? A. Glen Reed?

Q. Yes. A. Not that I recall.

Q. And actually you sent some stock certificates out to John Gale on his request, too, didn't you? A. What date?

Q. Well, I'm just talking about generally. Prior to August 27, 1964. A. Not that I recall.

* * * *

A. I say not that I recall.

Q. (By Mr. Nielson) You did from time to time send out other distribution corporation records to the Roosevelt office, though, didn't you? A. We had--in order for them to make distributions, the Ute Distribution Corporation had to have a list of the stockholders, but I think we sent those direct to the Ute Distribution Corporation.

Q. You sometimes sent copies of the transfer ledgers to your Roosevelt office, didn't you? A. We may have. I think the man who handled the transfers

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could answer that better than I can.

Q. When one of these transfers would come in by a non-Indian as to which you didn't require compliance with the advertising procedure, how did you make the determination whether he was an Indian or not? A. We had a complete list of the Indians. In other words, the original 490 was the list that we had. And those were the ones, the members of the mixed blood group.

Q. Now, these transfers were usually sent to you directly by your Roosevelt office without going through the Indian agency, weren't they? A. From a non-Indian to a non-Indian?

Q. Yes. A. I believe so.

Q. Do you have any knowledge or information as to how your Roosevelt office might have determined whether they were Indians or not? A. Not offhand.

Q. Is it possible that they might have also had a list of stockholders out there from which to make that determination?
A. They may have had a list. They probably did.

Q. Now, Mr. Cowan, are you familiar with the difference between a signature guarantee and a mere recitation of the fact that it was signed, sealed, and delivered in my presence? A. Yes.

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Q. What's the difference in your understanding? A. Well, the signature guarantee may have some liability on it. In case it isn't the signature of the individual whose signature you guaranteed. If it's a witness, I doubt there would be any liability. As long as he's a witness.

Q. It's true in these cases that you required a signature guarantee? A. Yes. That's a general practice on transfer of stock.

MR. NIELSON: I have nothing further.

THE COURT: Apparently that's all, sir. You may step down. I think we just as well take our morning recess for fifteen minutes.

(Recess.)

MR. DUNCAN: Call Mr. Richard Curry.

RICHARD HENRY CURRY, SR. called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DUNCAN

Q. How old are you, Mr. Curry?

THE CLERK: State your full name, please.

THE WITNESS: Richard Henry Curry, Sr. I'm 40 years old.

Q. (By Mr. Duncan) What's your mixed blood number?

A. 66.

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Q. What blood are you? A. Sir?
Q. What blood? A. Ute.
Q. What percentage? A. Oh. Half.
Q. Did you sell your stock? A. I sold it.
Q. Let me show you some documents that have already been identified and just ask you to identify your signature. First of all, did you ever see this unsigned stock Certificate No. 66? A. I believe so, yes.
Q. Are you sure? Or are we talking about the one you signed? A. No. I didn't see that.
Q. You didn't see the first one. Who did you sell that to? A. I sold 3 to Nick Murray.
Q. Did you know who Jerry M. Murray was? A. Yes.
Q. Is he related to Nick Murray? A. Brother..
Q. And a son of Clyde Murray? A. Yes..
Q. Did you appear before Mr. Murray when you signed this document of 6 November '63?

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A. Yes.

Q. Was it filled in? A. Yes.

Q. Now, is this your signature on the stock power? A. Yes, sir.

Q. Did you appear before Mr. Gale? A. Yes.

Q. Was that instrument filled in when you signed it?

A. I believe so, yes, sir.

Q. Did Mr. Gale attempt to talk you out of selling your stock? A. No.

Q. Did he tell you anything about value? A. No.

Q. You made a second sale, didn't you? Who did you sell your second 5 shares to? A. I sold 3 to Nick Murray and 2 to Gordon Harmston. The first 5 was to Clyde Murray.

Q. The next 2 to Nick and the last 5 to Harmston? Is that right? A. No, I sold 3 to Harmston and 2 to Nick.

Q. Is this your signature on the back of this stock certificate? A. Yes, sir.

Q. Did you see the front of the stock certificate?

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A. I don't recall.

Q. What did you get for the first sale? A. You mean when I sold to Clyde Murray?

Q. Yes. A. \$500 a share.
Q. Did you get cash? A. Yes.
Q. And when you sold the next 3 to Nick, what did you get? A. \$550.
Q. In cash? A. In cash.
Q. When you sold the last ones to Harmston, what did you get? A. \$400.

MR. DUNCAN: \$400. That's all the questions I have, your Honor, except to offer his social worker's file, Exhibit 11-B, and I would like to read two lines from it, if I may.

THE COURT: You may.

(Here Mr. Duncan read from the exhibit.)

MR. DUNCAN: Your witness.

CROSS-EXAMINATION BY MR. KLEMM

Q. Mr. Curry, you once worked for the Duchesne County Sheriff, didn't you?

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A. Yes, sir.

Q. Do you know what it means to be under oath, don't you? A. Yes, sir.

Q. You once served in the military service, too, didn't you? A. Yes, sir.

Q. Which one? A. Army.

Q. Was that during World War II? A. Yes. And after. And Korean war.

Q. What rank did you attain in the military service? A. Sergeant.

Q. Now, you were well aware of the requirement of offering the stock to the Tribe first before you sold it to other people, weren't you? A. I think so, yes.

Q. And in fact, I think you conversed with your father about this on occasion, didn't you? A. I believe so, yes. I'm not sure.

Q. So you knew that when you offered it you were required, as well, to obtain the amount of the offer at the time that you sold it to someone else, didn't you? A. Yes, sir.

Q. But, nevertheless, you subsequently sold for less

than the offered amount, didn't you?

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A. Yes, sir.

Q. And you did that on all three occasions, didn't you?

A. I don't recall that.

Q. Well, actually, you only offered your shares in connection with 5 shares, didn't you? A. I think I offered on all 10.

Q. Well, how much was your offer then on the first 5 shares? A. I don't remember, but I sold them for five.

Q. On the first 5 you offered them for sale for \$3,500, didn't you? A. I can't remember. I think that's probably right.

Q. Well, I show you an offer to sell that's dated September 13, 1963. That's your name on there, isn't it? And how much does that say you offered them for? A. \$3,500.

Q. And how many shares? A. Five.

Q. Then subsequently you sold those shares to Mr. Clyde Murray, didn't you? A. Yes.

Q. And he paid you \$2,500, didn't he? A. Yes, sir.

Q. But then later--or, at the same time of the sale, you signed an affidavit that stated that you had received \$3,500; isn't that correct?

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A. Yes, sir.

Q. But that wasn't true, was it? A. No.

Q. Now, that affidavit is dated the 6th of November of 1963; is that correct? A. That's what it says.

Q. Was that about the same time that you sold that stock? A. Yes. That's what it says.

Q. And that's the same time you got the money? A. Yes.

Q. But you didn't sign any of those affidavits in connection with the sales of your other stock, did you? A. I don't believe so.

Q. Do you know why that was? A. Well, it was after--

Q. It was after what date? A. August 27, I mean.

Q. Of 1964, wasn't it? A. '64, yes.

Q. So even though you made an offer through the agency, it wasn't necessary then to show that you had received the full amount of the offer, was it? A. No.

Q. So in those cases you just signed your stock certificate; isn't that correct?

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A. Yes.

Q. Now, before you sold your stock you shopped around a little to see how much you could get, didn't you? A. A little bit, yes.

Q. And especially in connection with the 5 shares you went around to various people, and you couldn't get more than what he paid you, could you? A. No.

Q. That was the highest figure you could get at that time, wasn't it? A. Yes.

Q. And that was the figure you received from Clyde Murray; isn't that correct? A. Yes.

Q. Later you shopped around even more. The price dropped after that, didn't it? A. Yes.

Q. And you shopped around to try to get money, a little more, for those other shares, didn't you? A. Yes.

Q. And the best you could do was \$350 on 3 of the shares and \$400 on the other 2? Isn't that correct? A. Yes, sir.

MR. KLEMM: That's all I have.

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CROSS-EXAMINATION BY MR. PAULSON

Q. Mr. Curry, you do read and write the English language? Correct? A. Yes.

Q. You say the last 5 shares you sold, 3 of those were sold to Nick Murray and 2 to Gordon Harmston? A. Correct.

Q. You've stated that you shopped around a bit to see where you could get the best price? A. Yes.

Q. Someone told you that Nick Murray might be interested, and you went to his place of business to talk to him? A. Yes.

Q. Is it true that he there and then offered you \$350 per share for 3 shares? A. Yes. I believe that's right.

Q. And did you accept that offer? A. Yes.

Q. You then made a trip into Salt Lake City yourself and picked up the stock certificate from the bank, didn't you? A. Yes. I came in with Nick.

Q. What's the stock certificate for the 4 shares? A. Yes.

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Q. And you had that stock certificate in your personal possession for some time before you signed it? A. A few minutes.

Q. And you had an opportunity to look at the front and the back of that certificate, didn't you? A. Yes.

Q. And Mr. Murray did pay you the agreed price of \$350 per share? A. Yes.

Q. And this was all done after August 27, 1964? A. I believe so. I'm not sure.

MR. PAULSON: That's all.

CROSS-EXAMINATION BY MR. BERTOCH

Q. You're a high school graduate, aren't you? A. Sir?

Q. You're a high school graduate? A. Yes, sir, I graduated from high school.

MR. BERTOCH: Thank you. That's all.

REDIRECT EXAMINATION BY MR. DUNCAN

Q. I just have one question. You are the son of Oran Curry that testified day before yesterday and the brother of Rex Curry that testified yesterday? A. Yes, sir.

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* * * *

THE CLERK: Please state your full name.

THE WITNESS: Louise Allen Case.

DIRECT EXAMINATION BY MR. DUNCAN

Q. What percentage Ute blood are you, Mrs. Case?

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A. One-eighth.

Q. One-eighth, You were on the mixed blood rolls? A. Yes, sir.

Q. You had a number? A. I did when I was with the full bloods. I can't remember the mixed bloods number.

Q. When did you first discuss with a buyer the sale of your stock? A. Well, I gave this a lot of thought since I've been sitting here in court, and I definitely remember that I had thought about selling my stocks, and I thought, well, if it's good enough for some white men to buy, it's good enough for me to keep. But I had four daughters, and every one of them dropped out of high school for the lack of funds, because I got a small welfare check and couldn't stretch it when their needs got greater. So I had one daughter in high school, and she didn't have any shoes and the necessities to go to school. So I thought: "Well, I'll go down and put them up--and advertise them." So I went to Mrs. Logan's office, and I put five shares up for \$500, with the understanding that is in my mind, nobody told me, that the full bloods, if they were able to sell, would have to give you \$500--whatever you had on there. And mine was \$500 a share, that you would have to give them the opportunity for that price, or more.

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Now, I went into that with the understanding, which a lot of people did, that you put that up for bid. There would be people come in. It would be advertised.

Q. Try and stay with me. A. One reason why we did was simply to get the money to have that we weren't getting.

Q. Before you sold your Ute Distribution stock, you had already sold your two land company stocks, hadn't you? A. Yes, sir.

Q. And you went through the same procedure? That is, you signed an offer to sell for, what was it? \$550 per share? A. I think the two of them came to \$1,100.

Q. And the tribe did purchase that? A. They did, uh huh.

Q. Now, who did you sell your first shares to? A. Well, I didn't know them apart, but I think that I first contacted, and I went to him, LeVere Labrum.

Q. That's L & L Motors? A. Yes.

Q. Do you remember what you talked about and when it was? A. Well, I remember definitely that the date had expired to the sale. What I mean, they had been posted, and I talked

around. I talked first to Mr. Clyde Murray, and he told me he couldn't buy them. He said--but he said, "If you need some money, I'll loan you \$50, and when you do sell, you can

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pay it back to me." And with that agreement, he let me have the \$50.

Q. That was before posting was up? A. Just a little while, I think, before. And then so when the people--I asked, oh, two or three different people that I met on the street, all of the mixed blood group, I said, "Is there anybody buying?" And they had so many deals going apparently that nobody wanted mine. And so I started home, and I was with Oliver Burson and his wife, and we went into a cafe on the outskirts of Roosevelt to have a sandwich. And one of the members of the mixed blood group came in--

Q. Mrs. Case, I don't want to interrupt you; but try and stay with my question. Did you have a conversation with the Labrums about buying your stock? A. Yes.

Q. Can you tell us when that was? A. I can't remember. It was in their garage.

Q. Did you try and sell the stock for cash? A. I did.

Q. What did you end up with getting? A. I ended up getting a '57 Ford with a flat crankshaft and a blown head gasket, and I believe \$1,700. Somewheres around there.

Q. For the five shares?

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A. For the five shares.

Q. That you'd advertised? A. That I'd advertised.

Q. Whose idea was it to take the car? A. Well, it wasn't mine, because I can't drive.

Q. Could you then? A. No, sir.

Q. Do you have a driver's license? A. No, sir.

Q. Did Labrum show you the car? A. No, sir, not until I insisted.

Q. How did you get the car home? Did somebody else--
A. Mrs. Young drove it. She's in the audience.

Q. Now, you signed an affidavit before Mr. Gale apparently. That's your signature? A. Yes, it is.

Q. Was it filled in? A. That particular one I believe was.

Q. Did Mr. Gale--you actually went before Mr. Gale? A.

Yes, uh huh.

Q. Did he tell you not to sell your stock? A. No, sir.

Q. Did he tell you what "unadjudicated or unliquidated claims against the United States" were? A. No, sir.

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Q. Did you know? A. No, sir. What I mean, I didn't know--not absolutely, no. Only there is money in it, or something of that sort.

Q. Did you know what the mineral rights of Ute Distribution Corporation were? A. No.

Q. Do you know anything about oil shale? A. No. I just know that it's black.

Q. Now, you also appeared before Mr. Gale and signed this stock power, did you not? A. For Labrums, yes.

Q. For the Labrums. When did you next sell some stock? A. Oh, well, it was the latter part of 1964, in the early spring. I think in February. I, I put them up on the board for sale. I may be wrong as to the dates, but I believe. I'm not right sure.

Q. Who did you sell them to finally, do you remember? A. Well, I sold three shares to Nick Murray and two shares to Dick Bastian.

Q. I show you another document which is called an affidavit, 7 May '64. Is that your signature? A. Yes.

Q. Have you ever heard of Laura J. Wood? A. No.

Q. Was that filled in when you signed it?

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A. No.

Q. Do you know who Laura J. Wood? A. No.

Q. Was that filled in when you signed it? A. No.

Q. Do you know who Laura J. Wood is now? A. No.

Q. Did Mr. Gale tell you he was buying for Laura A. Wood? A. No.

Q. How about the amount? Was that filled in? A. No, I don't think any of it was filled in.

Q. Did Mr. Gale have you raise your hand and be sworn? A. No.

Q. Just asked you to sign it? A. Uh huh.

Q. Did you ever see either of the first two stock certificates in your folder? A. I seen the first two. I signed one for five shares. They took it up, got it in the bank some-

wheres. And, of course, I don't read very good or understand what I do read. But anyhow I picked it up and said, "I want to read what I'm signing." Mr. Gale took it out of my hand, turned it over, and said: "You wouldn't understand what you read anyhow. Sign it."

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Q. Now, Mrs. Case, none of the stock certificates were ever signed by you in fact, though, were they? A. No, excepting, as I say, the one. The five shares.

Q. There are two documents here at the front of your file. One of them is dated 8 June 1964, notarized by Dick Bastian, and it's going to Dick Bastian. Was that document filled in when you signed it? A. No, sir.

Q. It was in blank. And I take it this arrow on the side was not on there at that time, was it? A. No.

Q. The next document is dated 8 June 1964 also, and this has your signature on it, doesn't it? A. Uh huh.

Q. Did you fill in any of these blanks, or were they filled in before you signed it? A. I think they were all blank.

Q. Were you attempting to cheat anybody when you signed this instrument? A. Heavens, no.

Q. Did Mr. Bastian put you under oath? A. No. I don't even think he stamped it. While I was there, to be honest with you.

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* * * *

CROSS-EXAMINATION BY MR. KLEMM

Q. Mrs. Case, I assume that you offered your stock for sale through the Bureau of Indian Affairs, didn't you? A. Yes, sir.

Q. And the first offer that you made, you offered them five shares, didn't you? A. Yes, sir.

Q. And you offered those five shares for \$2,500, didn't you? A. Yes, sir.

Q. Then later you went to L & L Motors. Now, I'll ask you if this is your signature on the offer to sell. A. Yes, uh huh.

Q. And the date on there is September 9 of 1963; is

that the date that you signed? A. Approximately, yes.

Q. As far as you know? A. Yes, as far as I know.

Q. All right. And then you went over to L & L, and you signed some documents in connection with this sale, did you? A. Yes. L & L. Uh huh.

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Q. I'll show you one affidavit here that says that you received \$1,500 for three shares of stock. Did you sign that? Is that your signature? A. That's my signature.

Q. And that is dated the 6th day of November 1963. Is that also approximately the date that you signed that instrument? A. Just a minute. I think the thing that may clarify this here, I did not get all in cash. But they divide it into two brothers. What I mean--but I did not get--what happened--would you mind listening?

Q. May I clear it up? I think I can clear it up, and I'm going to give you that opportunity. A. Okay.

Q. L & L consists of two brothers that operate a car lot? A. Yes.

Q. There is-- A. LeVere something.

Q. And when they bought your stock, there were five shares, and they wanted to divide it up between them? A. I didn't know anything about this until I got down to Mr. Gale's office.

Q. But when you got down to Mr. Gale's office, you found out they were going to divide between them, but that was for their own convenience?

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A. That was their business.

Q. You didn't worry about that? A. No.

Q. But you signed, then, two affidavits when you went down there. One involved two shares, one involved three shares? A. I apparently did, uh huh.

Q. And they're dated the 6th of November 1963, and that was about the time, that was the date, on or about the date that you signed them? A. I think so.

Q. Good. Now, you later sold some other shares; and, as a matter of fact, you later offered some other shares for sale, the other five, for \$2,500, didn't you? A. That's right.

Q. Now, how much did you receive for the share that you sold, the three shares that you sold to Nick Murray? A. Well,

I--by that time the car had gone completely haywire; the first one--

Q. Just tell us the agreed price. A. Well--

Q. So that we can save time, how much did he agree to pay? A. I think it was \$440 a share.

Q. You were aware at that time, weren't you, that you were supposed to sell them for not less than the offered price? Isn't that correct?

[636]

A. Well, yes.

Q. And then how much did you get from Mr. Bastian for the two shares that you sold to him? A. I got \$400 a share.

Q. And that again was under the amount that you had offered them for, wasn't it? A. Uh huh.

Q. Now, when it came to payment, you received an automobile from L & L, didn't you? A. Uh huh.

Q. In addition, you received some \$1,800, didn't you? A. I had borrowed \$100 from them before.

Q. So they gave you \$1,700? A. Approximately \$1,700.

Q. And they paid you that much cash and credited you the \$100 that you owed them-- A. Uh huh.

Q. --and then an automobile for some \$1,700; isn't that right? A. I think so.

Q. Now, are you aware, Mrs. Case--strike that. Now, at one time you sold some stock to the Ute Indian Tribe? A. Yes, sir.

Q. I think you testified to that. And I think you said that they gave you \$550 a share, is that correct?

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A. I believe so. The check was for approximately \$1,100, I think.

Q. Now, if the tribe had decided to buy that stock, the Ute Distribution stock, and had paid you \$500 a share, you would have been satisfied, wouldn't you? A. I probably would have done, but at the time I--I wouldn't be now, no, for the simple reason we have discovered that under the Reservation out there, there is a wealth of minerals and what have you--

Q. When did you discover that? A. When we got to looking into it and talking to people that knowed more about it. Now, I was worried at one time that our resources were gone, we didn't have any.

Q. As a matter of fact, you learned that from your attorneys, didn't you? Isn't it your attorneys that told you that you had lots of minerals over there on the Reservation?
A. Well, I think so--

Q. Yes. They did, didn't they? A. And they're digging for gas or oil just about five miles above my house now. So I can almost see it.

MR. KLEMM: I think that's all.

CROSS-EXAMINATION BY MR. PAULSON

Q. Mrs. Case, you were satisfied with the deal you made with Nick Murray, weren't you?

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A. Well, let's put it this way. I think I was, but he wasn't.

MR. PAULSON: Thank you. That's all.

MR. BERTOCH: No questions.

REDIRECT EXAMINATION BY MR. DUNCAN

Q. Mrs. Case, when you went to the bank on these several occasions, how were you paid? That is, in what fashion?

A. Do you mean for L & L? Is that what you're--

Q. Well, any of the times. A. I never went to the bank at all for the last payments.

Q. For the earlier ones did you go to the bank? A. I went to the one, where they split the certificate or the--made out the two papers to the Labrum brothers.

Q. All right. Now, you received a cashier's check, didn't you? A. Yes, sir.

Q. And did you endorse it? A. Yes, sir.

Q. What did you do with it then? A. Handed it back to Mr. Gale.

Q. What did he do with it? A. He took it somewhere in the bank, I don't know where. I think just around the corner where he keeps their money.

Q. And did he come back?

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A. He came back, and I do believe that he gave Mr. Labrum a cashier's check--or a check of some kind. He didn't give him currency, I do not believe, because he says, "Here is your money." And I said, "Well, now, can't I pay the man myself?" And I said, "How do you know that I owe him some money?" And he said, "You got a car, didn't you, and borrowed \$100 from him?"

MR. DUNCAN: That's all.

MR. BERTOCH: No questions.

MR. KLEMM: So, Mrs. Case, you actually received a check for \$2,500, is that correct?

THE WITNESS: That is correct.

MR. KLEMM: And that, you endorsed over?

THE WITNESS: That, I endorsed over.

MR. KLEMM: Thank you.

MR. DUNCAN: Call Mr. Workman.

THE COURT: Thank you. You may step down.

* * * *

THE CLERK: Please state your full name.

THE WITNESS: Joseph Arthur Workman.

DIRECT EXAMINATION BY MR. DUNCAN

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Q. What's your mixed blood number, Mr. Workman? A. I don't recall right at this moment.

Q. What blood are you? A. One-quarter.

Q. Did you sell your stock? A. Yes.

Q. Did you ever see this first stock certificate, No.

474? A. No, I don't think so. Not the first one, no.

Q. You signed a notice to post it? A. Yes. Uh huh.

Q. And then there is an affidavit purporting to be--

dated 10 February '64, signed by you? A. Yes. -

Q. Did you appear before John Gale? A. Yes.

Q. Was it filled in? A. Not that I can recall.

Q. Were you attempting to cheat anybody when you signed that? A. No.

Q. Did Mr. Gale have you raise your hand? A. No.

Q. Is this your signature on the stock power? A. Yes. That's my signature.

Q. Who did you sell the first five to? That is five, isn't

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it? A. Five or six, I believe, the first one I sold.

Q. The first is six? A. To Bob Huish of the Huish Drug

Q. Why did you sell it? A. Well, I was in debt to the bank, and I had to make a payment on a note. So--

Q. The First Security Bank? A. Yes.

Q. Would you have sold if you didn't have to pay that obligation? A. No.

Q. Did you have any other way to get the money? A. No.

Q. What did you receive? A. I think it was \$500 a share as advertised in the tribe.

Q. \$3,000? A. Right.

Q. How were you paid? A. As I recall, I received a check from Mr. Huish and gave it to the bank for payment on my note that I had there.

Q. The second stock certificate you sold, you signed, did you, sir? A. Yes.

Q. Did you read it?

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A. No.

Q. Now, Mr. Workman, you were at one time, were you not, sir, an officer of the Affiliated Ute Citizens? A. Yes.

Q. What's the correct title of your organization? A. The correct title?

Q. Affiliated Ute Citizens of Utah? What's the title? I want it for the record. A. The mixed blood group?

Q. No, no. The one you were an officer of. A. Affiliated Ute Citizens of Utah.

Q. All right. You were an elected officer? A. Yes.

Q. When? A. I believe the first time was in 1958.

Q. And you served until when, sir? A. Until 1961.
Q. How many members of the board were there? A. Five.
Q. You were one of the five? A. Yes.
Q. During the time you were an officer of the Affiliated Ute Citizens of Utah, did you ever meet any of the officers of First Security Bank from Salt Lake City? A. Yes.

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Q. Who were they? A. On several occasions. Well, there was Mr. Dickerson, who was then I believe director of the bank in Roosevelt, and Mr. Tab George, and a Mr. Cowan.

Q. Is this Mr. Cowan that just testified? A. Yes, sir.

Q. Mr. Tab George, who was also with the trust department? A. He was at that time, yes.

Q. Anyone else? A. Did I mention Mr. Eccles?

Q. Mr. Eccles? Which Eccles? Do you know? A. I don't recall his first name. I know his name was Mr. Eccles.

Q. And he was from the bank? A. Yes.

Q. And these men met with you at various meetings of your Affiliated group? A. Yes.

Q. Now, this Affiliated Ute group is not the same as Ute Distribution Corporation, is it? A. No.

Q. It sort of went out of existence-- A. Right.

Q. --when UDC was formed? A. Right.

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Q. Now, I show you what has been marked and received as Exhibit 57-A and ask you if you have ever seen that before. A. Yes.

Q. Were you a director at the time it was signed in--I believe it's dated July 28, 1960. A. Yes. I was on the board of directors.

Q. So you were on the board of directors of the Affiliated Ute Citizens? A. Yes.

Q. Did you ever have occasion to discuss this instrument with any of the bank officers you've just named to us? A. Yes. We, the board of directors, discussed this, along with Mr. John Boyden, our attorney. And on several occasions--

Q. Do you recall anything that was said in your presence by Mr. Cowan or Mr. George or Mr. Eccles concerning the Affiliated Ute trust agreement? A. As I recall, the trust agreement was brought up to protect the members of the Affiliated Ute

Citizens, not only the non compos mentis--

MR. BERTOCH: I object to this. He isn't giving us the conversation.

Q. (By Mr. Duncan) We'll straighten that out, if the Court please. Can you tell us now, Mr. Workman, who was present, and about the date, if you can, sir, that this conversation you were starting to tell us about occurred?

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A. Well, as I recall, there was Mr. Tab George and Mr. Cowan and Mr. Paul Murphy and Mr. Boyden and myself and the board of directors.

Q. Will you tell us where this meeting took place? A. I believe it was in the Legion Hall at Roosevelt.

Q. Who were the other directors of the Affiliates that were there? A. A Mrs. Lula Murdock, a Mrs. Elizabeth Bumgarner, Preston Allen, Elmer Hackford, and myself.

Q. Now, don't tell us, sir, what you understood. Tell us what, if you can recall, was said by anyone present concerning this trust agreement. A. Well, Mr. Boyden stated that--

MR. BERTOCH: Your Honor, I object to anything Mr. Boyden said. This is hearsay as far as we're concerned. I don't object to anything that somebody from the bank said, if it's identified who said it.

THE COURT: Statements made in the presence of bank officers wouldn't be rendered inadmissible because the officers didn't themselves actually make all the statements. The objection, accordingly, is overruled. He may answer.

Q. (By Mr. Duncan) Do you remember anything Mr. Cowan said? A. Well, Mr. Cowan was in agreement with Mr. Boyden to this fact, that this document, or this instrument never had to be

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sent back to the Secretary of--

MR. BERTOCH: I'm sorry. I have to object again. He uses the term, "was in agreement." We want to hear what he said, not his conclusion about what was Mr. Cowan's state of

mind.

THE COURT: Is that the substance of what you recall was said? Just state the substance of what you recall was said.

A. Well, the substance of what--we were discussing the paragraphs or writing in this particular document, and Mr. Boyden said that the document was not satisfactory to the thinking of the Secretary of Interior and would have to be sent back and certain paragraphs would have to be changed to be acceptable by the Secretary of the Interior, and also the board of directors and the bank. And Mr. Cowan said that this would be their thinking and that it should be done.

Q. (By Mr. Duncan) What paragraphs were you talking about, if you can recall? A. Oh, I don't recall just the exact paragraphs.

Q. What was the subject? A. Well, it had to do with the protection of the mixed blood members in regard to their stocks or the income of the moneys or anything that came pertaining to these stocks which the bank was then making proposals as to becoming their

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trustee.

Q. Was anything said about the service to be rendered by the bank?

MR. BERTOCH: Your Honor, I object to this as being irrelevant. The services supposed to be rendered by the bank is clearly set forth in documents that are in evidence, and they are the best evidence of the obligation. What somebody heard at some time weeks or months before an agreement was signed is completely irrelevant.

THE COURT: The objection is overruled. He may answer.

A. Would you state that question again, sir?

Q. (By Mr. Duncan) Go ahead and tell us the rest of the conversation, anything the bank officers said or you said.

A. Well, the question was brought up as to whether or not the document or agreement would protect only the non compos mentis or the minors or would it protect the whole body of the Affiliated Citizens. And they felt that--

Q. Now, who felt, and what did they say? A. Mr. Boy-

den felt that it should be to protect all of the Affiliated Ute Citizens, due to the fact that there would be persons who would want to take stocks as payment on indebtedness or bills or some such a thing, and they thought that there should be put in this document a paragraph or paragraphs to protect all the Affiliated Ute Citizens in that respect.

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Q. Did Mr. Cowan or Mr. George say anything in response to that? A. I believe that Mr. George said he thought this would be a good idea to protect all the citizens, all the Affiliated Ute Citizens, for that reason, that there may be some that would want to mortgage or some of the persons would--who they were indebted to--would want to take these stocks as payment or part payment on their indebtedness.

Q. Now, was this conversation, this meeting you've told us about, before the execution of the instrument? And I tell you it's dated July 28th. A. Before the final execution of it, yes.

Q. There were several drafts? A. Oh, yes.

Q. And you discussed them, did you, at these meetings? A. We discussed them in our meetings and with Mr. Boyden and the superintendent. The bank members were not present at all times.

Q. How many different times did you meet with the bank officers from Salt Lake or any of them prior to the execution of this agreement whereat you discussed such an agreement? A. I'm not certain as to the correct number of times, but there was several times.

Q. More than one? A. Oh, yes.

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Q. More than two? A. Yes. There was three or four times we met.

Q. How many times did Mr. Eccles come out? A. As I recall, Mr. Eccles was only there once.

Q. Do you recall what he said? A. In one of our meetings we held at Roosevelt--now, this is one of the meetings of the entire group, not just the board of directors--the meeting was called for the entire group to discuss the possibility of having First Security Bank as the trust officers. I believe Mr. Eccles got up and pointed out as to how First Security Bank had the necessary machinery and know how and personnel to take care of these matters and these--the business of the mixed blood and

could do it in a better manner than they could in Roosevelt, because they had more facilities and more machinery and more personnel to do this with.

Q. Now, Mr. Workman, did you ever have an occasion to talk to Mr. Martin M. Zollar, superintendent of the Uintah and Ouray Reservation? A. Oh, yes. On several occasions.

Q. Did you ever discuss with him anything about protection of the mixed bloods in connection with the sale of their stock? A. Yes. I think so.

Q. Do you recall what he said and what you said and who was

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present? A. Well--

MR. KLEMM: Could we have dates, or approximate dates?

Q. (By Mr. Duncan) Yes. If you could tell us about any such conversation with Mr. Zollar, who was present, where it was, and any date or approximate date, Mr. Workman. A. Well, we, the board of directors of Affiliated Ute Citizens, had several conversations with Mr. Zollar.

Q. About this subject? A. And persons from the area office. Yes, about this particular--

Q. The board was present. Can you tell us where it was? A. It was in our office that we had at Fort Duchesne.

Q. In the agency offices? A. Yes.

Q. Can you tell us who else was present besides yourself and the board and Mr. Zollar? A. Oh, let's see, there was some men from the area office. I don't recall just whether it was--

Q. The area office of the Bureau of Indian Affairs? A. Yes. Phoenix. Out of Phoenix.

Q. Will you tell us about when this conversation took place, or meeting? A. Oh--

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Q. Well, was it after August 1961? A. No, I think it was prior to August 1961.

Q. Do you recall what if anything was said concerning the sale of the Ute stock? A. There was talk regarding the mixed bloods or the Affiliated Utes' stocks in the two corporations, and the assets of the Affiliated Utes and the Ute Indian Tribe, and there should be some way to protect the members of

the Affiliated Utes--

Q. Mr. Workman, counsel reminds me, I don't think we got what you received for your second sale of stock. Can you tell us that, sir? A. Second sale of stock? I believe it was \$350.

Q. From whom? A. Mr. Haslem.

Q. Why did you sell? A. I had to pay off a note, finish paying off a note that I had at the bank.

Q. At First Security Bank? A. At First Security Bank.

Q. So you sold it to Mr. Haslem, and did you receive the \$350, or was it simply applied? A. It was a check given to me by him, and I signed it and gave it back to him.

Q. Would you have sold if you did not have to pay off that

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obligation? A. Definitely not.

Q. Did you try to sell it anywhere else or obtain money anywhere else? A. No.

MR. DUNCAN: That's all.

CROSS-EXAMINATION BY MR. KLEMM

Q. Mr. Workman, how many years did you go to school?

A. I went to the beginning of the eighth grade.

Q. You do read and write the English language, don't you? A. Yes.

Q. Do you have newspapers in your home? A. Yes.

Q. You read those regularly, don't you? A. Yes.

Q. You also take a tribal newspaper, or you did at the time of the sale of your stock, didn't you? A. Occasionally.

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Q. Now, you understand what it means to be under oath?

A. Yes.

Q. What does it mean? A. It means that you're under oath to tell the truth.

Q. What is your present occupation? A. Right now I'm employed at the Nebeker's store at Fort Duchesne.

Q. You used to operate your own business, didn't you? A. At one time, yes.

Q. And at that time you handled all types of oil and gas products, didn't you? A. Yes.

Q. And you hired people for your own use--for your own business? A. Yes.

Q. Now, you were once affiliated with the Affiliated Ute Citizens of Utah, I think you testified? A. Yes.

Q. That group was formed pursuant to Public Law 671, wasn't it? A. Yes.

Q. And it comprised the mixed bloods who were to be separated from the tribe; isn't that correct? A. Yes.

Q. This was their organization and their group that was

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formed to represent them in connection with the division of the assets; isn't that correct? A. Yes.

Q. I assume that that was organized soon after the final rolls were published; is that also correct? A. I believe, yes.

Q. Now, you were elected as a member of the business committee? A. No.

Q. What did you call it? A. Board of directors of Affiliated Ute Citizens.

Q. So you had a board of directors, and that board was organized pursuant to a constitution and bylaws of that organization, wasn't it? A. Yes.

Q. And you served in that capacity and in connection with that service you helped manage the assets of the tribe, didn't you? A. Yes.

Q. You helped to divide the assets of the tribe, too, didn't you? A. Yes.

Q. So you were quite familiar with what those assets were; isn't that correct? A. In a sense, yes.

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Q. There were some that were divisible and some that were not divisible; isn't that also correct? A. Yes, sir.

Q. You concentrated your efforts first on those that were divisible? A. Yes.

Q. And these were divided amongst the mixed blood members of the tribe, weren't they? A. After dividing with the full bloods.

Q. All right. First they were divided between the

mixed bloods and the full bloods, and then they were divided on to the mixed blood members of the tribe? A. Yes.

Q. And in connection with the division, the Affiliated Ute group also formed the Ute Distribution Corporation; isn't that correct? A. Yes.

Q. And this corporation issued some stock to its members? Isn't that correct? A. Ute Distribution Corporation?

Q. Yes. A. Yes.

Q. Now, the Ute Distribution Corporation then was established to represent the mixed bloods in connection with the management of certain assets on the Reservation; isn't that also

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correct? A. Yes, after we went out of office, yes.

Q. Now, the Affiliated Utes did this until you went out of office. Then did you go out of office? A. No. You misunderstood me. The Ute Distribution Corporation did this after we went out of office as the board of directors for the Affiliated Ute Citizens.

Q. When did that happen? A. I believe it was 1961.

Q. Is that August 27, 1961? A. Thereabouts.

Q. Was that in any way related to the termination proclamation that was published in the Federal Register? A. It was related, yes.

Q. As a matter of fact, that was your cutoff date, wasn't it? A. For the board of directors, yes, but not the termination date.

Q. After that date, however, the Ute Distribution Corporation took over; isn't that correct? A. Yes, yes.

Q. It took over the management of the assets, along with the tribe; isn't that correct? A. The indivisible assets.

Q. Well, the divisible assets had already been divided,

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hadn't they? A. With the exception of oil and gas leases and unadjudicated claims against the Government, yes.

Q. Well, they were the ones that went over to the corporation, or that corporation was concerned with; isn't that correct? A. Yes.

Q. But all the divisible assets had been completely distributed by August 27, 1961; hadn't they? A. To my recollection, yes.

Q. As a matter of fact, the Ute Distribution Corporation had a completely different board of directors than the Affiliated Ute Citizens, didn't they? A. Yes.

Q. They just didn't retain any of you men that were in the Affiliated group, did they? A. Not in the beginning.

Q. Then the corporation took over. Now, did that stock of the Ute Distribution Corporation have any par value? A. No.

Q. Do you know why not? A. Well, because of the fact that there was still yet unadjudicated claims against the Government and there were assets that were not dividable, and there would be income from that that was undetermined.

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Q. Good. And of course, it was undetermined as to what any par value would be; isn't that correct? A. Right. Yes.

Q. Now, was there any way of really determining what minerals there were in the ground at that time? A. By whom?

Q. That you know of? A. By whom, sir?

Q. By you. A. No.

Q. By the board of directors? A. No.

Q. Now, there were some changes in the laws of the mixed bloods on August 27, 1961, wasn't there? A. Well, I would imagine so, yes.

Q. Well, tell us what they were. You lost some of the services, didn't you? A. Oh, yes, we lost some of the services that were accorded to us while we were members of the Ute tribe.

Q. Did you lose your hunting and fishing rights? A. Yes.

Q. You lost your medical privileges, too? A. Yes.

Q. And there was a change in taxes, wasn't there? A. Yes.

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Q. You lost your tax exempt status, didn't you? A. Yes.

Q. And on your own personal lands on that date you had to start paying property taxes to the State, didn't you? A. Yes.

Q. And your law and order services changes, didn't they? A. Yes.

Q. You no longer could call the tribe for law and order services, could you? A. No.

Q. You called the county after that? A. Yes.

Q. Isn't that correct? Your educational rights changed to some degree, didn't they? A. Yes.

Q. And there was a change in some employment privileges, weren't there? A. Yes.

Q. Isn't it true that members of the tribe with a certain percentage of blood can get jobs without taking regular Civil Service examinations with the BIA? A. Members of the tribe, you say, sir?

Q. Yes. A. Yes, members of the tribe.

Q. But that was no longer available to mixed blood members

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after August 27, 1961, was it? A. No.

Q. There was some change in water rights at that time, wasn't there, if you know? A. To those lands owned by the mixed bloods, yes.

Q. Well, do you know of any other rights that were lost by the mixed bloods on that date? A. I can't recall at this time.

Q. Well then, on that date all you really had left was your stock in the Rock Creek Cattle Corporation, the Antelope Sheep Corporation, and the UDC; isn't that correct? A. I think this is true.

Q. And later you sold your stock in the Rock Creek Cattle Corporation and the Antelope Sheep Corporation, didn't you? A. Yes.

Q. Also at a later date you sold your shares in the UDC; isn't that correct? A. Not all at one time, but I did sell them, yes.

Q. I think you testified that you sold six shares to Robert Huish? A. Yes.

Q. How much did you get for that stock? A. \$500 a share.

Q. How much did you offer it for? A. \$500 a share.

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Q. So you got what you offered it for? A. Yes.

Q. And you were satisfied with that sale, were you not? A. Yes.

Q. And you are today, aren't you? A. Yes.

Q. Then you sold some other stock to Mr. Haslem? A. Yes.

Q. One share? A. One share.

Q. How much did you get for that? A. \$350.

Q. Now, that share was sold after August 27, 1964, wasn't it? A. Yes.

Q. In fact, all the others that you sold were after that date, weren't they? A. Yes.

Q. You actually saved some of that stock until just lately, didn't you? A. A year or so ago, yes.

Q. Now, Mr. Workman, as one of the leaders of the mixed blood group, you were in a position to know the value of those stocks, weren't you? A. Not the total value, no.

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Q. Well, at least you were in a position to know more than the usual person what those stocks were for; isn't that correct? A. Oh, in a sense, yes.

Q. And nobody forced you to sell your stock when you sold it to the Huish's, did they? A. Well, not exactly forced me, no. It was just to pay off an indebtedness.

Q. Well, you may have been forced by circumstances, but at least not by people? A. Oh, no, no.

Q. Not by the BIA? A. Not by the BIA, or persons, no.

Q. Now, while you were on the board of directors of the Affiliated Ute Citizens, you attended numerous meetings pertaining to the termination, didn't you? A. Yes.

Q. Can you tell us how often that group held meetings about that subject? A. Oh, sometimes twice a week, sometimes three times a week. It depends on whatever come before us and how urgent it was to bring these to the group of the Affiliated Ute Citizens.

Q. How many persons would generally attend such a meeting? A. You mean of the group, or the board of directors?

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Q. Yes. How many mixed bloods? A. Oh, there would be anywhere from thirty-five to seventy-five, approximately, more or less.

Q. During that time you would discuss the lawsuits that you had against the Government, wouldn't you? A. And other things, yes.

Q. And you would discuss other rights that pertained to the stock? A. Yes.

Q. Did you ever discuss the potential value of the stock? A. Occasionally, yes.

Q. Now, Mr. Boyden sometimes attended those meetings, didn't he? A. Yes.

Q. And he often advised the people in attendance to retain their stock, didn't he? A. Yes.

MR. KLEMM: I think that's all.

MR. PAULSON: No cross-examination.

CROSS-EXAMINATION BY MR. BERTOCH

Q. Just a couple of questions, Mr. Workman, I call your attention to the time you sold the one share of stock to Mr. Haslem. A. Yes.

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Q. Do you recall on that occasion that Mr. Haslem said to you that he would prefer that you sell it to somebody else because you had a loan with the bank and suggested to you that you try, if you could, to sell it to somebody else rather than him? A. I don't recall that this was--

MR. BERTOCH: You don't recall that. That's all.

THE COURT: Is there anything further? You may step down, sir. Thank you.

MR. NIELSON: Lena Sixkiller.

LENA D. SIXKILLER, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

THE CLERK: State your full name, please.

THE WITNESS: Lena D. Sixkiller, Roosevelt, Utah.

DIRECT EXAMINATION BY MR. NIELSON

Q. Mrs. Sixkiller, are you a member of the mixed blood group, Uintah and Ouray group? A. I was.

Q. And you are? A. You mean of the Affiliated Utes?

Q. Yes. A. Yes.

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Q. You are also the president of the Ute Distribution Corporation, are you not? A. Yes.

Q. Mrs. Sixkiller, I'll ask you if you are familiar with the distributions which have been made on the Ute Distribution Corporation stock since November of 1961. A. Yes.

Q. Are you able at this time to indicate for me precisely what those payments have been? A. Yes.

Q. I'll ask you, if you would, Mrs. Sixkiller, to begin with the earliest payment that you have of record and indicate for me the date of the payment, the source of the payment, and its amount. A. Well, in--after the termination act was in force, which was in '61, the first payment that was made by the Ute Distribution Corporation was in 1961, November 28, and it was \$20 per share.

Q. All right. And what was the source of that money, do you know? A. That was royalties and rentals and proceeds of the Reservation.

Q. Mineral royalties? A. Yes.

Q. All right.

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A. I'll just run through the list there, and where there's a claim I'll tell you, if that's okay.

Q. Why don't you indicate for me as to each one, what it's source was, if you would, please. A. Okay. In 1961, December 20, there's a payment of \$5 a share, and it was the same as above. In 1962, February 15, there was \$30 per share. The same that was given in the November 28 dividend.

Q. In other words, minerals as to those last two? A. Yes, uh huh. And 1962, June 27, there was a \$10 per share. And it was the same. '62, in September 15, \$3 per share, the same. In 1962, December 11, \$5 per share. And it was the same. And 1963, March 11, \$30 per share, and it was from a claim.

Q. That's an unliquidated--that was one of the claims against the United States? A. Yes.

Q. All right. A. In 1963, July 17, \$27.50. And that was from proceeds of the Reservation.

Q. All right. A. In 1964, March 10, \$7 per share, and that was the same. Proceeds of the Reservation. In 1964, March 25, there was \$18 per share dividend, and that was from a claim.

Q. Okay.

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A. 1964, December 11, there was \$5 per share, and that was proceeds of the Reservation. In 1965, April 1, there was \$40 per share, and that was a claim from the Government. 1965, August 2 there was \$20 per share, and that was proceeds from the Reservation, such as oil and gas royalties and rentals and so forth. In 1965, October 8, there was \$240 per share paid, and that was from a claim. 1966, January 3, \$50 per share was paid, and that was proceeds of reservation, oil and gas leases and so forth. 1966, July 1, there was \$30 per share, and that was the same as above. And in 1966, December 19, there was \$143 per share, and that was from a claim. 1967, April 8, there was \$18 per share, and that was from proceeds of reservation, oil, gas leases, rentals. And that's it.

Q. All right. Now, I'll ask you to check two figures for me, if you would, Mrs. Sixkiller, because I note a discrepancy between my notes from our discussion this morning. A. July 27?

Q. No. Would you check March 11, 1963, and give me the number on that one again? A. Yes. \$34 per share, a claim.

Q. \$34? I think you indicated \$30 before, Mrs. Sixkiller. So it was \$34, however?

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A. Yes.

Q. All right. And the other one is April 1 of 1965. Would you check that amount for me again? A. \$45 per share, and that was from a claim.

Q. That was \$45, and not \$40? A. Yes. \$45.

Q. All right. Now, have you totaled those figures up? A. Yes. From November 28, 1961, up to the present time, there has been \$710.50 paid per share. And \$462 of that amount has come from claims. \$248.50 has come from oil and gas leases, royalties, rentals, and proceeds of the reservation, prospecting.

Q. Now, Mrs. Sixkiller, in your capacity as president of the Ute Distribution Corporation, do you also have occasion to meet with the tribal business committee in relation to the management of the resources of the Reservation? A. Yes, sir.

Q. That is, those that were not at least distributed pursuant to the provisions of the law? A. Yes, sir.

Q. Do you in that work consider mineral leases, requests

to lease the Reservation for minerals? A. Yes.

Q. I'll ask you, Mrs. Sixkiller, if you are familiar with any oil and gas leases which have been issued by yourself

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and the tribal business committee acting jointly, say, within the last year. A. Yes.

Q. Would it be possible for you to describe those, or is it too complex of a subject to just discuss off the top of--

A. I can tell you that we have approved oil and gas leases that were advertised June 1 and June 15.

Q. Do you have any idea how many acres they might--

A. I wouldn't know offhand.

Q. All right. During that period of time, have you rejected any requests to lease the Reservation for oil and gas?

A. Not as to oil and gas sales.

Q. How about during the period of time that you've served as president of the corporation--

A. Yes, we held up for approximately six months.

Q. Held it up? A. Yes.

Q. Did you approve? A. No, we didn't approve of it.

Q. It wasn't ever-- A. It was a small claim with an individual.

Q. I see. Have you also considered applications to lease or purchase mineral lands on the Reservation for other types of minerals? A. We have been contacted by one company that I know.

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Texas Gulf Sulphur.

Q. Texas Gulf Sulphur Company. What sort of request did you consider from them? A. It was along the line of phosphates and stuff like that.

Q. Was that a formal application, or was it--

A. Just in a form of a letter.

Q. I see. Have you acted upon that? A. No.

Q. Any other inquiries concerning Indian mineral lands?

A. Only in our office, we received several letters asking about oil shale.

Q. Oil shale? A. Uh-huh. But we--in our office we have no information of any kind concerning oil shale on the Reservation or anything like that. So--

Q. Have you taken any action with respect to those inquiries? A. We have just written, answered their letters.

Q. Well, maybe you could tell me how you've answered their letters. A. Oh, just stating that oil and shale hadn't even been discussed or--and at the present time we hadn't even talked about advertising or anything.

Q. I see. Any other minerals you can recall that you've had discussions relative to? A. I think that's--

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Q. In your meetings with the tribal business committees, have you had discussions relative to leasing or advertising of minerals in general? A. Yes.

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* * * *

(Substitution made.)

Q. (By Mr. Nielson) Now, Mrs. Sixkiller, I'd like to draw your attention to various entries in the minute book and ask you some questions about things which are contained there. First of all, could we turn to the minutes of the meeting of September 10, 1963? Do you have that page? A. Yes.

Q. And the minute book indicates that you were in attendance at that meeting. Were you in fact there? A. Yes.

Q. Did you contact that meeting?

THE COURT: Now, let's have a few ground rules on examining this. I assume that we can take at least prima facie established that what is represented as happening in the minute book actually happened.

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MR. NIELSON: Yes. I wanted to question her about some discussions--

THE COURT: I appreciate that. If the minute shows she was there, we assume she was there; and that might apply to various other things that we otherwise might have to inquire about.

Q. (By Mr. Nielson) Very well. Turning to minute No. 9 for that date, Mrs. Sixkiller, it is indicated that there was

some discussion relative to a certain stockholder in the corporation receiving an automobile in lieu of cash in one of the sales. Do you recall that discussion? A. Yes, that's right.

Q. Will you tell me, Mrs. Sixkiller, who was present at the time of that discussion and what was said by the persons who were there? A. Those present at the meeting were Mrs. Lorena Iorg; Mrs. Murdock, Preston Allen, Mr. Bert Narcho, acting superintendent, Mrs. A. H. Logan. And this meeting was held at the Uintah and Ouray agency, Fort Duchesne.

Q. Did Mrs. Iorg or Mrs. Logan participate in the discussion relative to that automobile transaction? A. Yes.

Q. Will you tell me what either one of them may have said at that time?

MR. KLEMM: I'll object to what Mr. Narcho said. I.

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think it's clearly hearsay. Mrs. Logan has been here.

THE COURT: Mrs. Logan was present?

THE WITNESS: Yes, sir.

THE COURT: The objection is overruled.

MR. PAULSON: Of course, I object as to defendant Murray, his being hearsay as to him.

THE COURT: I assume it is.

MR. NIELSON: I don't it as against the defendant Murray, your Honor. Just as against the United States.

THE COURT: All right.

THE WITNESS: Well, the main discussion was that we understood that this stockholder had received his car instead of cash and went on to sell a--sign an affidavit stating that she had received the cash. And we thought that it was important enough that where they had offered it to the tribe, the rules and regulations say that after posting it for a limited time and going through the legal procedure of the offer to sell and so forth, we felt that inasmuch as they had offered it to the tribe at a certain price in cash, we felt that it

should be dealt with, the new stockholder, the one they were selling it to, we felt that's the same way it should be.

Q. (By Mr. Nielson) Now, I'll ask you to turn to the minutes for the date September 18, 1963, Mrs. Sixkiller. Can you find those for me?

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A. Yes.

Q. Referring to minute No. 3 on that date, there is a reference to some discussion relative to the procedure in the same and in particular reference to the surrenders of the certificate to the holder of record. Can you tell me who was-- first of all, were you present during that discussion? A. Yes.

Q. Can you tell me who else was there? A. Mrs. Iorg, Mrs. Hackford, Mrs. Murdock, Mr. Ralph D. Cowan, and Mr. C. Tab George. And this meeting was held in Salt Lake City.

Q. Can you tell me what the discussion was at that time relative to the matter of surrendering the stock certificate to the holder of record? A. Well, a discussion was-- "Articles of Incorporation and Bylaws." I asked Mr. Cowan what his opinion was on Section 11 of the bylaws--Section 4 of the bylaws and 11 of the Articles of Incorporation, the transfer of stock of the corporation. "This section stated that the certificate must be surrendered to the holder of record for transfer." Now, we wanted to know what that meant. "Did this mean that the board of directors or the bank as transfer agent." And Mr. Cowan explained that it meant the bank as transfer agent for the Ute Distribution Corporation."

Q. Now, in the next minute on that particular date, Mrs.

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Sixkiller, there is some reference to the matter of selling stock to non-members and whether or not that should be for cash. Were the same persons present at the time of that discussion? I'm referring to minute No. 4 on that date. Same date. A. The same date?

Q. Yes. The next paragraph. A. Yes. Now, what was your question?

Q. My first question is, were the same people present? A. Yes.

Q. That is, Mr. Cowan, Mr. George, and members of the

board? A. Yes.

Q. Will you tell me what the discussion was relative to that subject matter at that time? A. Well, we asked Mr. Cowan what his opinion on the offer to sell forms where the seller fills out the consideration for cash. And then "when the seller sells to non-members, does this mean for cash, too."

Q. And did Mr. Cowan say anything about that at that time? A. "Mr. Cowan stated that when the seller sells to non-members, it must be on the same conditions as the offer made to the members."

Q. I see. Now, Mrs. Sixkiller, if we could refer to the minutes for the date of November 14, 1963. Can you find that particular one?

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A. Yes, uh huh.

Q. I'll have to look at your copy, because I don't think I have that particular one. Now, on that date, Mrs. Sixkiller, there is a reference to some discussion relative to the matter of receiving automobiles in exchange for this stock. Can you tell me who was present at that time and what the conversation might have been? A. Myself, Mrs. Murdock, Mrs. Hackford, and Mr. Preston Allen, George Morris, attorney for Ute Distribution Corporation.

THE COURT: Who is Preston Allen?

THE WITNESS: He was a member of the board of Ute Distribution. I notice they have a Preston Allen in the First Security. I don't think he wants those two to get mixed up.

Q. (By Mr. Nielson) It wasn't the one who worked for First Security? A. No.

Q. Did you mention Mr. Cowan and Mr. Morris? A. No, I didn't. I mentioned Mr. Morris. He's a corporation attorney. And Ralph Cowan.

Q. Of First Security Bank? A. Yes, sir.

Q. Will you tell me what the discussion was relative to the matter of automobiles being exchanged for the stock?

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A. Well, the discussion was on the advertisement and offer to sell, "conditions contained in offer as cash and ten per cent

deposit of total selling price submitted with bid." The seller -- we went on to discuss that the seller had not received cash, he had taken second hand cars plus some cash. I understand the way they done on the cars is they had taken the actual cash value of the car and paid the balance.

Q. I see. But that was discussed that day-- A. Yes.

Q. --while the persons you've indicated were present?

A. Yes.

Q. Now, if we could refer to the minutes for the date November 21 of 1963, Mrs. Sixkiller. Can you find that one for me? What was that?

Q. November 21. I don't see the particular entry that I have in mind there. A. They perhaps have the wrong date.

Q. Perhaps I do. But let me ask you this general question. At any time did you as an officer of the Uta Distribution Corporation have occasion to address any correspondence to Superintendent Zollar relative to the matter of automobiles being taken in exchange for the cars, or automobiles, being taken in exchange for the stock? A. I don't recall sending Mr. Zollar a letter about cars

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but we did send him a letter asking that certain stockholders was obligated to the corporation on real estate loans. And we asked that they not be advertised or sold in any way, because they had--the income off it--they had pledged the income off their stock towards these loans. And there weren't only the low clients. They were others to be considered that had had court cases--court orders against them, executions and assignments.

Q. Do you remember when the approximate date of that letter was? A. Right offhand I can't, but it's here in our minutes. I could find it.

Q. Was it before August 27, 1964? A. Yes. It was during--when they were offering to the tribe.

Q. You say you think you can find it in the minutes? A. I might.

Q. Could you look for it, Mrs. Sixkiller, and see if you can find that? A. It might not be the letter. Our letters are in the file, but these minutes--

'THE COURT: Why not proceed and do that during recess?

Q. (By Mr. Nielson) All right. I ask you to direct

your attention to the minutes--

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A. Just a minute.

Q. All right. A. On this letter, there is also carbon copy sent to the area director and First Security Bank.

Q. Have you located the letter? A. No, just in the minutes here. The minutes.

Q. You've located a minute reference to the letter? A. Yes.

Q. Does the minute indicate what the date of the letter was, or approximate date?

THE COURT: Let's proceed as I directed, and do that during recess.

THE WITNESS: Okay.

MR. NIELSON: I thought she had it, your Honor. I'm sorry.

Q. (By Mr. Nielson) Mrs. Sixkiller, I'll ask you if in your capacity as the president of the distribution corporation you ever had an occasion to request of Superintendent Zollar or anyone else connected with the Bureau of Indian Affairs that an investigation be initiated relative to the sales of Ute Distribution stock? A. Yes, sir.

Q. Would you tell me when this was approximately? A. I can't offhand. I'd have to check back in the minutes.

Q. Does the date January 14, 1964--could you check the

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minutes for that date and see if that is at all helpful? A. Right here are the minutes. It says, "Write a letter to Superintendent Zollar reference stock certificates that have--" this doesn't pertain to that. What was your question?

Q. My question is whether you ever wrote a letter to or otherwise requested Superintendent Zollar to initiate an investigation into the matter of Ute Distribution stock sales. It may not be on that date, Mrs. Sixkiller. I'm just asking you if you did. A. Yes, uh huh.

Q. Do you recall what was the outcome of that request? A. Nothing.

Q. Did you get an answer to your request? A. No, sir.
Q. I'll ask you now to look at the minutes for the date February 5, 1964, and in particular Minute No. 8. Can you find that one for me? A. Yes.

Q. And that indicates that you had some discussion with George C. Morris, your attorney, relative to the matter of stock certificates being advertised and delivered to a transferee without the seller receiving the full purchase price? A. Without the buyer having paid the advertised price.

Q. Yes. And the minute further indicates, does it not,

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that you instructed Mr. Morris to write a letter to the bank about that subject? A. Yes, sir.

Q. Do you know if such a letter was in fact written? A. I couldn't say for sure but I assume that he wrote one.

Q. Now, Mrs. Sixkiller, I'll ask you to refer to the minutes for the date February 13, 1964, and February 17, 1964; and have you found those? A. Yes, sir.

Q. It is indicated in those minutes that there was some discussion about your having talked with Mr. John B. Gale about the matter of the purchase price of Ute Distribution stock. Do you recall that conversation? A. Yes.

Q. Could you tell me how that came about? Just exactly what the reference-- A. Well, we had had complaints from different stockholders saying they hadn't got the full price as advertised, what they were asking. So I informed Mr. Gale that no more certificates would be signed until the selling stockholder had received his money as advertised for the sale of his stock, to the members of the tribe. Mr. Gale informed me that the buyer deposits part of the money in the bank, ten per cent or more. And also the balance due is kept in the bank until the certificates

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are signed. Then is released to the seller.

Q. Where did that conversation take place, Mrs. Sixkiller? A. In the First Security Bank.

Q. Was anyone else present other than yourself and Mr. Gale? A. Mrs. Murdock. We went in once or twice a week to sign certificates.

Q. Now, Mrs. Murdock is now deceased, is she not? A. Yes.

Q. Anyone else? A. No.

Q. At that time did Mr. Gale make any mention of situations in which the money was not actually handled through the bank itself on stock transfers? A. No.

Q. Now, if you'll refer to, finally, here, Mrs. Sixkiller, the minutes for the date--if I can find the date--it appears to be May 22, 1964, and I'm referring to--no. It's unnumbered. It would be about the third page of the minutes for that date. A. May what?

Q. May 22, 1964. Have you found the page? A. Yes.

Q. Do you find there a reference to some discussion concerning the sale of Mr. Bumgarner's stock? It would be on about the third page. Let me see if I can help you.

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A. Yes.

Q. Will you tell me what that was all about, Mrs. Sixkiller? A. Well, there was a "copy of a letter to Sam Bumgarner from Ralph D. Cowan dated May 7, 1964, in answer to Mr. Bumgarner's letter to Mrs. Lorena Iorg, dated May 7, 1964, informing him that the bank had on file his signed affidavit dated December 16, 1963, in which Mr. Bumgarner stated that he had received \$2,500 from Mr. Dillman for his stock. And also they had on file his agreement and assignment dated December 18, 1963. And he was informed that on the basis of these two instruments, they issued a certificate to Mr. Dillman for five shares of stock which he had inherited from the estate of his daughter, Elizabeth Marleen Bumgarner. Therefore, he would not be entitled to the distributions of \$35 and \$90 referred to in his letter."

Q. Now, maybe I don't understand the minute entry there, Mrs. Sixkiller. So perhaps you could explain it to me. Does that relate to a letter you had received, or is that a discussion-- A. It's a letter that Mr. Samuel Bumgarner had written to Lorena Iorg.

Q. I see. Did you have any discussion-- A. He was asking about these distributions that had been made, if he was entitled to them or Mr. Dillman was entitled to them.

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Q. Did you have any conversation with Mr. Cowan about that situation? A. No.

Q. All right. So-- A. But he just sent us a copy of the letter that Mr. Cowan had sent him.

Q. I see. And your reference in that minute is merely to the discussion you had over the letter you had received from Mr. Bumgarner? A. Yes.

MR. NIELSON: You may cross-examine.

CROSS-EXAMINATION BY MR. BERTOCH

Q. Mrs. Sixkiller, let me call your attention again to the minutes of November 14, 1963. A. November 14?

Q. Yes. A. Yes.

Q. Let me call your attention to the last paragraph on the first page. Would you take just a few seconds to read that to yourself and get acquainted with it? A. I want to ask you a couple of questions about it. A. Yes, sir.

Q. Does that refresh your recollection on that meeting? A. Uh huh.

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Q. And that discussion? Is that right? A. Yes.

Q. The first part of that paragraph has to do with a discussion about some stockholder of UDC who had received an automobile instead of cash, or an automobile and cash, in connection with his stock; is that correct? A. Yes, sir.

Q. Now, I call your attention to this sentence, about the middle of the paragraph: "A notice should be published in the local newspapers. Mr. Cowan was informed that the board had approved putting a notice in the papers. The secretary read the notice as dictated by our attorney, Mr. Morris." Do you remember what the substance of that notice was? A. We have it here in the minutes. It will take me a little time.

Q. Do you remember in substance what it was about? A. Well, it referred mostly--we put a paper--a notice in the paper to the public as to the sale of the stock. There had been several--

Q. Well, tell me in substance what the notice was. A. Oh. They should check back with the Ute Distribution Corporation to see if these stocks were cleared to be sold.

Q. That who should check back? A. The buyer.

Q. The buyer should check?

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A. Yes.

Q. Was this published in the newspaper? A. Yes.

Q. What newspaper was it published in? A. In the Roosevelt Standard, and the paper in Vernal. Vernal Express.

Q. And that notice appears somewhere in the minutes, is that correct? A. Yes.

Q. Do you think it would be attached to the minutes of that day, or would it be somewhere else? A. Well, it's in here. I just read it before I brought these out. It's in here somewhere. It would take me a little time to find it.

Q. Let's not take the time now. One other sentence, the last sentence of that paragraph: "It is the responsibility of the superintendent to be sure the the affidavit is true." Who is meant by the superintendent? A. The superintendent of the Uintah and Ouray agency.

Q. Do you remember the discussion that surrounded that, and why that sentence was put in the minutes? A. Yes.

Q. Would you tell us, please? A. We had notice--just like above here--and then taking cars and stating that they had received cash.

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Q. Do you recall who said it was the responsibility of the superintendent to be sure the affidavit was true? Was that the consensus of the opinion of the board of directors? A. Mr. Morris, our attorney.

Q. What? A. Our attorney and the board's opinion.

Q. All right. Now, Mrs. Sixkiller, did the UDC board of directors conduct any type of an educational campaign to try to inform the stockholders that they shouldn't sell their stock? A. Since I've been a member of the board, in '61, we have sent out informational letters, and in nearly all we have asked that they not sell their stock. Also at our annual meetings in the third--January--July of each year, we have asked them not to sell.

Q. You say you sent out a letter in 1961, at least one? A. I can't say offhand, but I think we did.

Q. Have you any idea about how many letters you've sent out? A. I imagine we've sent out, oh, at least one a year.

Q. And all of these discouraged from selling their stock? A. We just asked they not sell their stock.

Q. And these letters went to each of the stockholders, is that correct? A. Yes, those as of record.

Q. Did this letter explain to them why they shouldn't sell

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their stock? A. No, no.

Q. Did it say anything else in substance other than "Don't sell"? A. Just information--just an informational letter to the stockholder, and on the bottom we usually ask they don't sell their shares.

Q. Now, was there anything else done toward education them to that effect, other than these letters and the annual meetings? A. Well, in conversation to different ones.

Q. Members of the board would converse with different ones to that effect, is that correct? A. Uh-huh.

Q. And when you observed that there was some merchandise being taken by some of them for some of their stock, was there any type of a bulletin or educational program conducted with respect to that to warn them about that? A. Not that I know of.

Q. Not that you know of. Is it true that your board authorized the First Security Bank as transfer agent to hold the stock certificates of the stockholders? A. No, that--yes. Uh huh.

Q. All right. Now, as secretary and then president of the UDC, in your opinion from the beginning has Mr. Haslem and

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Mr. Cowan and the First Security Bank been of assistance to you and your board? A. They certainly have.

Q. And have they been of assistance in protecting the interest of the stockholders? A. In my opinion they have.

MR. BERTOCH: That's all.

CROSS-EXAMINATION BY MR. PAULSON

Q. Mrs. Sixkiller, during the period that the stock was being sold up until August of 1964, is it true that the UDC published three separate lists of stockholders who had advertised their stock for sale and sent these lists to the various stockholders in the corporation? A. Yes.

Q. Do you have a record of the lists which were sent?
A. I don't have them here with me. We have them in our office. Wait. Let's see. Would you reframe that question again? I didn't quite understand--there was three lists, did you say?

Q. Yes, weren't there three separate lists published and sent out by the corporation to the stockholders? A. No. The corporation had nothing to do with publishing the sale of stock. That was taken care of at the Uintah and Ouray Indian Agency.

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Q. Let me show you what has been marked as Defendant's Exhibit M-E, and I'll ask you if you recognize that document.
A. Yes.

Q. What is it, please? A. It's a list of stockholders that we had in our office. Yes, I recall that.

Q. Was that list prepared by the corporation? A. Yes.

Q. Was it in fact sent out to all of the stockholders?
A. I don't know if it was sent out to all of them. We sent a letter asking those that were interested if they wanted this type of information sent to them, to please write us and let us know, giving their correct name and address. And there were a lot of them that did not respond.

Q. Would you examine that list carefully and see if you can ascertain whether that was the first list which was sent out? A. I don't know if this was the first list or not. But we only sent them out after the Department of Interior sent us a copy of those that had offered to sell, and the amount.

Q. Do you have reference in your records to lists which were prepared by the corporation? A. Yes. But offhand I couldn't find them right now.

Q. Could you by examining your records determine whether this was the first list which was sent out?

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A. Yes.

Q. Would you do that during the recess? A. All my records are in Roosevelt, Utah.

Q. I refer to your records here. A. To our minutes here? I don't know if I could or not. It would take quite a while to go through all these.

Q. You're not sure whether your records-- A. I'm sure.

our records would show that that was one of the lists. But to say whether it was that first one I couldn't say offhand.

Q. Could you determine that by examining the minute book you have before you? A. If I went back through all our minutes and everything, which would take possibly two days, I could.

Q. Thank you. One other question. The list which was prepared then was prepared from information furnished you by the BIA? A. Yes.

MR. PAULSON: Thank you. That's all.

CROSS-EXAMINATION BY MR. KLEMM

Q. Mrs. Sixkiller, on many occasions your attorney, Mr. Morris, would come to your meetings, wouldn't he? A. Which meetings is that?

Q. Board of directors, stockholders.

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A. Yes. Also our annual meetings, he was always present.

Q. The sale of stock came up quite often in these meetings? A. Yes, sir, it did.

Q. Mr. Morris had several occasions to warn the people against selling their stock, didn't he? A. Yes.

Q. He did that both in general stockholder meetings, annual meetings, as well as in board of directors' meetings, didn't he? A. Yes, sir.

Q. And he said that it was very difficult to tell the value of the stock and that it might be more valuable, and people ought to hang on to it, didn't he? A. Yes, he stated that more than once.

Q. And that was basically his advice to the stockholders, wasn't it? A. Yes, sir.

Q. Now, you keep a list of new stockholders, don't you? A. Yes, sir.

Q. And that list of stockholders changed drastically since 1962, didn't it? A. Yes, sir. From 490 stockholders to around 1,500.

Q. When you started out there were 490, weren't there? A. Yes, sir.

Q. You say today you have 1,500?

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A. Approximately.

Q. Do you know how many of those original shares have been sold? A. I have an idea.

Q. How many? A. I'd say around between 45 to 47 per cent.

Q. Now, at the present time there are no mineral leases on the Reservation, are there? A. Yes, there's oil and gas leases.

Q. Well, how about minerals other than oil and gas? A. To my knowledge there isn't.

Q. And, Mrs. Sixkiller, you've talked to many of the mixed bloods about their stock, haven't you? A. Yes, sir.

Q. Is it fair to say that it was general knowledge among the mixed bloods that they were required to first offer to sell their stock to the tribe before they could sell it to somebody else? A. Yes, sir. I talked to a lot of the members, and they told me that ten shares of Ute Distribution was their business, and they could do as they pleased with it. And I agreed.

Q. That was also the general consensus of opinion, wasn't it? A. Yes, sir.

Q. They weren't going to let anybody interfere with their

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rights to that stock, were they? A. No.

Q. And if they wanted to sell it, they'd sell it? A. Yes. And if they wanted to give it away, that was all right.

Q. And they didn't want the Government horning into their affairs? A. That's right.

Q. And they didn't make any bones about expressing this, did they? A. Not to me they didn't.

Q. Those people who did come in to complain were complaining about the fact they had been cheated out of their offering price; isn't that right? A. Yes, sir.

Q. Their basic complaint was that when they did sell their stock, they didn't get the price that they had sold it for? A. Yes, sir.

Q. Some way they had been cheated, and they were angry about it; isn't that correct? A. Yes, that was the general feeling.

MR. KLEMM: That's all.

MR. PAULSON: Your Honor, may I ask another couple of questions?

THE COURT: Very well.

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FURTHER CROSS-EXAMINATION BY MR. PAULSON

Q. Mrs. Sixkiller, you in identifying this Exhibit M-E stated this was prepared by the corporation? A. Yes, sir, that's right.

Q. To the best of your knowledge it was sent out to all of the stockholders? A. No. Just the mailing lists that we had. We sent out letters to all the 490 members telling them that when these were--we would send a notice out, and if they were interested in buying, to please send their address, their correct name and their address to us, and we would make a mailing list.

Q. But you're not sure whether this was the first list or second list? A. No, I couldn't say whether that was the first or second list. But we had a very small response to that request, and there was just a few that were interested.

MR. PAULSON: Offer Exhibit M-E.

THE COURT: Hearing no objection, it's received.

(Defendants' Exhibit M-E received in evidence.)

THE WITNESS: I'd like to state here on these dividend payments here, all the 490 original members participated in all these dividend payments up until the first transfer, which was August 26, 1963.

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FURTHER CROSS-EXAMINATION BY MR. KLEMM

Q. Mrs. Sixkiller, how much money was involved in that time, within that period of time? How many payments? A. Eight, according to my list.

THE COURT: That is, eight prior to August 1963?

THE WITNESS: Yes, sir.

Q. (By Mr. Klemm) So there were eight payments that all 490 would have shared in; is that correct? A. All 490 shared in. Not the--not could have. They did share in.

Q. And how was that paid to you? A. We're paid with a dividend--a voucher check in the Ute Distribution Corporation, and we have all cancelled checks on file in our office.

Q. And it was necessary for each mixed blood to sign, to endorse the check; is that correct? A. Yes, sir.

REDIRECT EXAMINATION BY MR. NIELSON

Q. Mrs. Sixkiller, could you total those first eight payments you have reference to? A. If I had an adding machine I could. I'm not a very good--

Q. I'll ask you to take a look at them and tell me if it isn't true they come to a total of \$150.

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A. Just a minute.

THE COURT: We won't take time. The Court might even manage that itself. Proceed.

Q. (By Mr. Nielson) Mrs. Sixkiller, did you ever at any time undertake to advise the stockholders of Ute Distribution Corporation as to what the value of minerals on the Reservation were? A. No, sir, I am a very poor judge on that. I have no idea of the exact value.

Q. Did Mr. Morris ever undertake to advise them what the value of the minerals were? A. I don't know. I assume he did. But--

Q. Well, do you know of any occasion when he in fact told the mixed bloods what the value of the minerals were? A. Well, he couldn't tell, just like the rest of us, because we didn't know what for sure they were worth. We're no specialists in that field.

Q. Did you ever undertake to have them appraised? A. No, sir.

Q. Was there any reason why you didn't? A. I guess somebody just never did mention it to us or ask us. And besides, we wouldn't have the money to do it.

Q. I see. Did you ever request the United States to

make money available for you to do it? A. Under our termination act, we weren't allowed any of

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those services.

Q. But at any rate, you didn't? A. No.

Q. Did you ever undertake to advise the stockholders what the value of the unadjudicated and unliquidated claims against the United States were? A. No, sir.

Q. Are there in fact some of those claims still pending? A. I understand there's two left. What the amount is I don't know.

Q. All right. Did you ever at any time instruct the First Security Bank relative to the procedure which they should handle in relation to discouraging sales of stock? A. We could have. In some of our--probably in the form of discussion. The transfer agent let us know that he was a transfer agent, and it would be run according to their rules and regulations.

Q. Did you ever at any time specifically give them any instructions on that particular subject? A. On what the value of the stock was?

Q. No. On whether they should encourage or discourage sales of stock. A. We talked about it.

Q. Can you tell me what you told them? A. I couldn't remember offhand just the discussion.

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Q. You've been here in the courtroom for several days attending these proceedings, have you not? A. Yes, sir.

Q. And you've heard our references here to the letter of John Boyden to the bank? A. Yes.

Q. Did that letter have reference to a resolution adopted by your board? A. It was adopted by the Ute Distribution board, but not when I was a member.

Q. You weren't on the board? A. No. The Ute Distribution Corporation was formed in 1958.

Q. I see. But after you got on the board of directors, did you have any communications with First Security Bank of that type relative to that subject matter? A. I can't recall offhand. We could have.

Q. While you were on the board of directors--and I'm referring particularly to the period on or about August 27,

1954, did you ever specifically instruct First Security Bank to release the stock certificates? A. I just came in 1961.

Q. Excuse me. I meant to refer to '64 rather than '54. A. Yes. We discussed it, and we thought it was--that if any of the members--you know, after this covenant run off,

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the certificates--we discussed that if any member wanted their certificate, they could have it.

Q. Did you ever send any letters to Mr. Cowan about that? A. I don't think so. Just discussed it. And we thought that it would be well that they leave their stock there, and some of them might lose them or something like that, and it would cost quite a bit to get a new certificate printed.

Q. Did you have any understanding about the arrangement pursuant to which the stock was being held by First Security Bank? A. Now, a lot of these things as far as the certificate is concerned were done before I was a member of the board. So I don't actually know what--why the--who delivered the stock to the bank or how they got there or what.

Q. You don't know anything about that particular point?

A. No, I wasn't on the board at that time.

* * * * *

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FRANCIS W. CHRISTIANSEN called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

THE CLERK: State your full name, please.

THE WITNESS: Francis W. Christiansen.

DIRECT EXAMINATION BY MR. NIELSON

Q. Dr. Christiansen, where do you reside? A. At 2320 Neffs Lane, Salt Lake City, Utah.

Q. And how are you employed? A. Well, I'm employed at the University of Utah as a professor of geology.

Q. Will you indicate for me, Mr. Christiansen, what formal training you have had in the field of geology? A. Well, I'd like to consider this on the basis of, say, three or four areas. To begin with, I'd like to review my academic

training.

THE COURT: Doctor, would you mind just moving the microphone a little. You don't need it like some of the other witnesses.

* * * *

A. Well, yes. I've drawn that on several other maps. Yes.

Q. (By Mr. Nielson) Are you familiar with the geography of the region? A. Yes. And in our exhibit over here we can see a map showing the setting of the Indian reservation in relation to the major topographic features of the State, with the Uintah Range up to the north, extending east-west, and the Wasatch Range on the west striking generally north-south.

Q. Are you referring to what has been marked Plaintiffs' Exhibit No. 92?

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A. Yes. And the blue lines outline the Indian reservation as indicated on the previous display.

Q. That is, as indicated on Exhibit 93? A. That's right.

Q. And did you--

THE COURT: Just a minute, please.

MR. BERTOCH: Your Honor, I must earnestly object to the introduction of 92 in evidence and ask that 91 be stricken, and object to this question and will object, your Honor, to all questions which relate to his supporting this man's opinion, as it relates to the value of this stock, on the grounds that it's irrelevant.

THE COURT: There's a point there. I understood your previous objection to relate to whether a map could be received in evidence upon the identification. Now, do you try to make a point of that?

MR. BERTOCH: No, your Honor. My previous objection was to a stipulation that he claimed was a stipulation of the parties that I--

THE COURT: You don't have to have a stipulation to

receive such a simple thing as a map with exterior boundaries of a reservation, of which I take judicial notice. Now, that's just nonsense.

MR. BERTOCH: There's much more than that in the stipulation. It hasn't been read to the Court, and that's

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why I was objecting to it.

THE COURT: Beg pardon?

MR. BERTOCH: There is much more in that stipulation which was just introduced in evidence, more than exterior boundaries. I don't care about exterior boundaries; but there's much more in that stipulation, that has been put into stipulation than that.

THE COURT: What do you object to as part of the stipulation?

MR. BERTOCH: Your Honor, as I recall, the stipulation talks about how much land there is, how much oil reserves there are. But--

THE COURT: But this map doesn't have anything to do with that. Your objection was interposed to the map. My ruling was confined to the map. My position is that it doesn't require a stipulation to make the map admissible. Now, do you have something beyond that?

MR. BERTOCH: Yes, your Honor.

THE COURT: If so, state it.

MR. BERTOCH: My objection is to all of his testimony as it relates to the value of this stock. I have filed a memorandum two days ago with the Court, a copy which has been given to other counsel; and I don't intend to argue it now, except that I would like to call the Court's attention to this Court's instruction in the

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case of Vincent Chiodo v. General Waterworks Corporation to support my argument that I think all of this testimony, if it is an attempt to place a value on the stock, as far as this case is concerned, is absolutely irrelevant. And the Court said this to the jury, speaking of the value of stock and the reasonable value; and this was a 10b-5 case, of course, as the Court remembers. "What is reasonable value? If you know if without my telling it in a general way, I suspect that what I say now will conform to your general understanding of it, but this is the legal definition of reasonable value, so far as pertinent to this case. By reasonable value is meant the price in cash, or its equivalent, that the stock would have brought at the time or times in question if then offered for sale in the open market, with a reasonable time allowed to find a purchaser and assuming able, ready, and willing buyers and sellers, who are under no compulsion either to buy or sell, but with reasonable knowledge of the then existing circumstances and situation of the stock and related property, and the property interest it represented so far as disclosed by the evidence here." With that instruction, of course, I agree that--I believe that that is the law, as it is supported in my memorandum.

[716]

Now, already in evidence, your Honor, is considerable evidence of transactions, sales of this stock, which occurred during the period that is involved, which demonstrates that there was a market value and types of sales which qualify under the standard which this court set in the Chiodo case.

For example, there is in evidence given by Mr. Gale, evidence of 52 sales of stock to 13 different buyers in which the seller was Mr. Gale and the buyers were 13 different white persons, and who he testified were businessmen, whom we have every reason to believe from the testimony were both the seller and the buyer, were knowledgeable people, under no compulsion to sell, and met the standards the Court set down. And the testimony was that the sales, those 52 shares of stock varied between \$350 and \$530 a share.

There is evidence of 39 shares purchased by Mr. Gale from another white man, and every reason to believe that they met the standards the Court set down, and those sales were between \$350 and \$500. And the '64 series of applications, there are several other examples of sales between white people, and I think that a market value for this stock has been definitely set and that anything to do with what's in the ground out

there, or pie in the sky, has nothing to do with establishing the value of the stock, and, therefore, the damages in connection with this case.

THE COURT: The objection to the pending question

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and the exhibits is overruled. It may well be that the measure of damages will be as indicated in the Christiansen case, and in the Chiodo case, what would a reasonable buyer pay, knowing all of the facts. Market value doesn't depend wholly and exclusively upon what was actually received by way of purchase price, particularly when there is some possibility, or may be some possibility, as reflected by the entire evidence, that there was a market affected or controlled by the alleged fraud.

And I can't accept counsel's rationale which seems to control his ideas that what the stock actually sold for necessarily represented the market value for the purpose of one of the legs, or elements, of the formula adopted by the Circuit Court.

I think it is relevant to determine at least some of the basic circumstances with regard to the security, and how far we go will depend upon the development of the evidence.

I'm not adopting now any particular rule of damages. I'm going to think about it. But I'm going to let the plaintiff make its record along the line of its theory of damages, without drawing an iron curtain on the basis of any such rigid formula as counsel urges here.

You may proceed.

MR. BERTOCH: Your Honor, may I just, to save time, have a continuing objection on those same grounds to every

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question that is asked this witness?

THE COURT: Yes.

MR. BERTOCH: And every exhibit attempted to be introduced?

THE COURT: Yes. And on the grounds you've stated, the

objection is overruled, and all parties may have a continuing objection, and it's overruled.

[719]

* * * *

Q. You've indicated that it is an extremely unusual member. Could you tell me why it's unusual? A. Well, it's unusual, in that in no other formation on the earth do you find this combination of oil shale with the sodium carbonate minerals, nahcolite, and trona, the dawsonite, and actually a myriad of other minerals. It's a sedimentary unit. It also has oil and gas in it where there's sandy facies.

Q. You've referred to oil shale, Dr. Christiansen. Maybe you could explain to us just what oil shale is, so we can understand what we're talking about. A. Well, oil shale doesn't contain oil, nor is the rock a shale. So--

Q. Then it's kind of a misnomer. A. It's a misnomer here. The oil-rich units of the Green River formation contain a concentration of organic material, which when retorted to a certain temperature are expelled.

[755]

and converted to a fluid which can be handled in about the same way that ordinary crude petroleum is handled.

Q. About what temperature--

THE COURT: In other words, oil shale does not contain oil, but it may be the source of oil?

THE WITNESS: It contains the--a concentration of residue of the organisms that lived and died in this fresh water lake that covered Utah.

THE COURT: Can it be the source of oil?

THE WITNESS: Yes, it is.

THE COURT: In geological concept?

THE WITNESS: Oh, yes. That's right. Absolutely.

Q. (By Mr. Nielson) Now-- A. And is the source in this case.

THE COURT: Yes.

[756]

* * * *

Q. (By Mr. Nielson) Now, Dr. Christiansen, do you have an opinion as to what would be the second most significant mineral within the reservation that you have referred to thus far?

A. Oil and gas.

Q. Oil and gas. And I don't think-- A. Technically, I'm out--technically this isn't a mineral, but it's considered-- oil and gas in the mineral resources.

Q. I see. And is the oil and gas found in one particular formation, or is it-- A. No, it's found in several of these units. In and surrounding the Uintah reservation.

Q. And you, of course, referred to those as you went over your general review of the formations which were located there. Do you know, Dr. Christiansen, if there is actually any oil and gas production within the confines of the reservation?

[757]

A. Yes, there is. The Rangely Field extends into the eastern part of the reservation.

Q. Is the Rangely Field a significant oil field? A. Yes, it is.

Q. Would it be possible for you to describe its significance? A. Well, this display over here shows the spacing of the wells, and I haven't checked on the production recently, but it's appreciable.

Q. So we'll understand what you're talking about, Dr. Christiansen, you have now referred to Plaintiffs' proposed Exhibit 97A. A. Yes. And this shows the spacing of the holes in the Red Wash Field, and it has been extended, you see, down into the reservation here. This also shows other gas and oil fields.

Q. Let's read into the record here, Dr. Christiansen, what you're referring to. You're referring to a concentration of black dots which appear on the right-hand side just above the center of this eastern margin of the map. It appears to be the heaviest concentration of black lines on this particular map, and you've referred to that as the Red Wash Field. A. Yes.

Q. I understood we were talking about the Rangely Field. A. Did I say Rangely? This is the Red Wash. Q. Perhaps I misunderstood you.

[758]

A. The Rangely is related to the units we've mentioned down here. Weber formation.

Q. And that field is actually in production? A. Yes, it is, and expanding.

Q. What formation does that particular field produce from, Doctor? A. Well, it comes out of the sandy facies of the Green River formation and perhaps the upper part of the Wasatch which underlies--

THE COURT: Did you say they're actually producing wells within the reservation forming a part of the Red Wash Field?

THE WITNESS: Yes, uh huh. There are actual wells there within this reservation, within this outer border that we've been referring to.

Q. (By Mr. Nielson) But you're not necessarily saying that they do represent Indian lands? A. No, I'm just saying these are within the boundaries of the reservation.

[759]

* * * *

Q. (By Mr. Nielson) All right. Dr. Christiansen, in terms of its economic importance, could you indicate what the next mineral would be in the order of importance in the reservation? A. Well, we've considered coal as perhaps the third.

Q. Do you have an exhibit that indicates the coal?

[762]

A. Yes. There's an exhibit there indicating the location of the townships and ranges in which coal occurs, and the reserves for each specified area. Yes. That's the map showing the coal reserves. In the area colored blue it indicates the townships in which there are reserves of coal.

[763]

* * * *

Q. (By Mr. Nielson) Now, Doctor, in addition to the minerals we have now discussed which you consider to have economic significance in the Uintah and Ouray Reservation, are there any additional minerals that you have not already referred to which you consider to have economic significance? A. Well, yes. We mentioned oil and gas and oil shale.

Q. And coal?

[771]

A. And coal we've just discussed.

Q. Are there any others? A. We mentioned the potential of the asphaltic unit, the dawsonite, the nahcolite, the trona, gilsonite.

Q. Is it possible to indicate any particular areas within the reservation where these minerals occur? Dr. Christiansen? A. Well, in the terms of the salts that we've mentioned, this is not known. We know that there are these salts present from drill holes, but we don't know their extent. And this hasn't been explored as extensively as some of the other formations or the other units.

Q. Well, were you referring to these minerals in general in that statement? Or referring to a particular one? A. Yes. In general.

Q. But is it true that these minerals are known to exist within the reservation?

* * * *

Q. (By Mr. Nielson) Now, Dr. Christiansen, with the information which is available to you and the study which you have conducted of the Uintah and Ouray Reservation, in your opinion is it possible to place a value upon these other minerals which we're now referring to?

[772]

A. Yes. I have made a study of the leases and the bonuses that have been paid and the rentals over the past three and a half or four years.

Q. Now, which particular leases and rentals are you referring to? A. I'm referring to the oil and gas leases.

Q. Oh, I didn't understand that we were referring to that for the moment, Dr. Christiansen. My question was directed to minerals other than the oil shale, the oil and gas, and the coal; and my question is, are there minerals other than those three that you consider to have an economic significance within the reservation? A. Well, I think potential significance, that it's essentially impossible to determine their extent.

THE COURT: It would be mere speculation?

THE WITNESS: Yes, it would be speculation. But as I pointed out earlier, this formation has a tremendous potential, and it hasn't been explored. There aren't enough holes in the Basin to determine the position of these other significant minerals.

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* * * *

FRANCIS W. CHRISTIANSEN recalled as a witness on behalf of plaintiffs, having been heretofore duly sworn, testified further as follows:

DIRECT EXAMINATION BY MR. NIELSON

Q. Now, Dr. Christiansen, you have previously testified in these proceedings, and you understand that you are still under oath; is that right? A. Yes.

[804]

* * * *

Q. All right. Now, Dr. Christiansen, before the recess we had referred to various of the--in fact, we had referred to all of the formations, geologic formations which were present in the Uinta Basin, and I believe you had indicated that the formation in the Uinta Basin region which was of the greatest economic significance was the Green River formation; is that correct? A. Well, presently it is proving to be one of the most interesting, and certainly it has a great variety of economic products in it. And as I point out, I think it will without any question prove to be the richest single stratigraphic units in the world.

Q. And I believe you've already indicated for us what

some of the minerals are that could be named in the Green River formation, is that correct?

[809]

A. Yes.

Q. I believe you specifically mentioned oil shale? A. Yes.

Q. And, as I recall, we also got into a little bit of testimony relative to the Parachute Creek formation. Maybe by way of just brief review, you could explain--

* * * *

Q. (By Mr. Nielson) Now, Dr. Christiansen, do you have any knowledge relative to the concentration of the organic material which is known as oil shale in the Green River formation in the reservation? A. Yes.

Q. And could you indicate for me, sir, what the source of your information in that regard is? A. Well, I have had, of course, personal experience in sampling portions of the Green River formation, beginning way back in--

Q. And that's the work that you referred to before the recess? A. Yes. And then, of course, I referred to mainly the report of investigations by the United States Bureau of Mines.

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Q. Do you have particular reports of investigation there that you have reference to? A. Yes.

Q. Could you identify them for us, please? A. Yes. One of the earliest ones is numbered "Report of Investigation 5081."

Q. And that's entitled, "Oil Yields of Sections of Green River Oil Shale in Colorado, Utah, and Wyoming, 1945-52"?

A. Yes. And mainly I referred here to the latest one, 6420, "Oil Yields of Sections of Green River Oil Shale in Utah, 1952-62."

Q. And both of those are published by the United States Department of Interior, is that correct? A. Yes.

Q. The latest one dated 1964? A. Yes.

Q. Any others that you have referred to in this regard? A. Yes. These two numbered 5321 and 5614.

Q. Both published by the United States Department of Interior? A. Yes, sir.

Q. All right. And do you have any other sources of information aside from your personal experiences which you went into in some detail before and these publications? A. There are numerous publications regarding the Green River formation.

Professional papers, bulletins, special

[811]

papers by the United States Geological Survey, bulletins by the United States Department of Geological Survey, symposia, the Colorado School of Mines. I think they just finished the fourth recently of the oil shale. There are probably a hundred different publications, both technical and general, on the nature and extent of the oil shale of the Green River formation.

Q. Have you referred to all of those publications, Dr. Christiansen, in making your study? A. Well, those that I thought were significant in terms of the evaluation of reservation property.

Q. Are these publications which you have described, publications of a type which are customarily relied upon in the industry and considered reliable? A. Yes.

Q. Dr. Christiansen, I'll show you what has been marked as Plaintiffs' Proposed Exhibit No. 90, a document published by the Utah Geological and Mineralogical Survey affiliated with the College of Mines and Mineral Industries, University of Utah, Salt Lake City, Utah, entitled, "Oil and Gas Possibilities of Utah, Re-evaluated." Did you also have occasion to refer to that particular document? A. Yes. The doctor, Darwin Quigley's, report is in this document.

Q. And did you review and study Dr. Darwin Quigley's report?

[812]

A. Yes.

Q. And that's-- A. It's marked on that other copy there. I believe it is.

Q. That is the report beginning at--maybe you can give me a page, Doctor. A. Oh, here we are. This is a report, Paper 21, beginning on page 207 and extending to page 213.

Q. And it's entitled, "Green River Oil Shale Potential in Utah"? A. By Dr. Darwin Quigley and Jack R. Price.

Q. I'll ask you, Doctor, is that particular paper is a document which is customarily utilized and relied upon in the industry and considered reliable. A. Yes, it is. And, of course, this has also appeared in other reports that are used by companies in the Intermountain Area. For example, the petrogram here has a--the introductory page showing the map and indicating the nature of the reserves within the Uinta Basin.

Q. Now, I'll ask you, Doctor, if you undertook yourself to attempt in any way to verify the contents of Dr. Darwin Quigley's report in the publication we've just referred to. A. Yes. His report was published, I think, in '64. The report was

completed earlier. And so I went to all of the sources, and particularly these Bureau of Mines Reports of Investigation, and I updated the information and correlated it with the earlier information.

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Q. In your opinion, based upon this additional work which you have done, is the report of Darwin Quigley presently accurate? A. He is reported, of course--

Q. Well, I'm asking for your opinion. A. Yes.

[814]

* * * *

MR. NIELSON: All right.

Q. (By Mr. Nielson) Now, Dr. Christiansen, I'll show you what has been marked as Plaintiffs' Exhibit No. 79, a document entitled, "Bulletin 630, Bureau of Mines, Mineral Facts and Problems, 1965 edition." Is that also one of the publications that you referred to in making your study? A. I read this part of the bulletin referring to oil shale. I have it in my files.

Q. I see. I'll direct your attention to pages 638 through 641 of this particular publication, and are those pages relating to oil shale that you had reference to? A. Yes. There are other general references in the paper, however, on oil shale.

Q. And on those pages in particular are tabulated the reserves in various areas, including Utah? A. Yes.

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* * * *

Q. (By Mr. Nielson) Now, is the document we've just referred to, "Mineral Facts and Problems," also a publication which is customarily utilized and relied on in the industry? A. Yes.

* * * *

Q. (By Mr. Nielson) Now, referring to oil shale in general, Dr. Christiansen, could you explain for me how in your profession you go about calculating the oil reserves in oil shale? A. Well, we--the United States Bureau of Mines has set the pattern and have published the--

Q: Well, don't tell me who has done it. My question was, how do you do it? Can you explain for me how it was done?
A. This would be a long, detailed discussion involving a lot

[817]

of factors here that the--

Q. Well, perhaps you could just give us a summary of how this is done? A. Well, the reserves, of course, that are exposed can be sampled at the surface, and the organic content determined. And in the assay process the amount of oil recovered can be determined. In those areas back from the exposures, we rely on the drill cuttings or the drill core, which is sampled as assayed.

Q. All right. Now, in relation to the Uinta Basin, has this type of work been done? A. Yes. There have been many companies that have drilled holes in the Uinta Basin, and their cuttings and cores have been utilized in cooperative arrangements with the agencies interested in knowing the nature and extent and tenor of the oil shale.

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* * * *

Q. (By Mr. Nielson) Now, let's see, have we answered the last question I put to you, Doctor? I don't recall. A. I think we did.

Q. All right. Then, the calculations of the content of the oil shale, the reserves of the oil shale, computed in the manner which you've now described, were they included in the publications which we've just referred to and which you've testified that you've examined? A. Yes. The Quigley report, Bureau of Mines Report of Investigation, 5081, was the source of data that was used in his report.

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Q. Now, have you, Dr. Christiansen, on the basis of the information which was available to you and which you have described for us, undertaken to compute the amount of recoverable oil shale within the confines of the reservation itself? A. Yes.

Q. Would you describe for me how you made that determination? A. First, in order to bring this up to date, using all of the information available, I plotted the barrels per

cubic mile as reported in the various bulletins, and particularly the Bureau of Mines Publications, and, as a result of this, I found a correlation between the earlier data and the information that came in later as a result of additional drilling and additional sampling and additional assaying of the cores and the chippings.

Q. Can you describe the correlation which you found?
A. Yes. In Exhibit--what was that--93A--for example, those figures that are circled indicate a fairly close correlation.

THE COURT: Circled on the overlay?

THE WITNESS: Yes, circled on the overlay, indicate a fairly close correlation. For example, I can't read them from here, but the billion barrel contour--can you bring it just closer? Maybe I can use a--the billion barrel contour comes down through here, and then veers to the east in that manner. Now, I'm referring to what I'm going to call later

[822]

as Unit 1 in calculating the reserves.

Q. (By Mr. Nielson) It has the figure 1 in it? A. Yes.

Q. Where you're pointing to? A. And we find there is an earlier report here indicating 635 million barrels per day. Up here a one indicating--what is that? Five hundred?

Q. Five hundred eighteen, it looks like to me. A. One hundred fifty-eight million barrels per square mile. And in some instances these were calculated for the oil over fifteen barrels per ton.

Q. All right. Then all of the figures which are circled represent additional data which you took into account in verifying the Quigley report? A. Yes. And on this Exhibit 93C, I tabulated most of the recent data. And then I transferred the ones that seemed to correlate best with the Quigley report. From here on to the other exhibit.

Q. Let's identify this, Dr. Christiansen. This is 93C, and it's an overlay on the map of the State of Utah, which has been already received into evidence, and it has some numbers on it. Could you tell us what the numbers represent? A. Well, the numbers represent the assay results from the Bureau of Mines Investigations of the--and calculated to the number of barrels per square mile in millions--for example,

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this would be 273 million barrels per cubic mile, within the area of this.

Q. And the dot then would represent the hole, is that right? A. About the position of this hole.

THE COURT: You said "barrels per cubic mile"?

THE WITNESS: No. This is on a square mile. Everything under a square mile.

THE COURT: Well, that's what I understood first, but you used the term "cubic mile"?

THE WITNESS: Your Honor, I'm sorry.

THE COURT: All right.

Q. (By Mr. Nielson) All right. Now, turning back to Exhibit 93 and Exhibit 93A, which 93 is also a map of the State of Utah, and 93A is an overlay which you prepared and we've already had some reference to, I note that on the map itself you have projected some red lines. Could you describe for me what the red lines are?

* * * *

Q. (By Mr. Nielson) Can you tell me what the red line is? A. Yes. The red lines indicate the amount of oil along

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the red line per cubic mile. Or we could call them "isobarrel" lines, or lines of equal oil shale reserves based on the drilling of the Green River formation in that area.

Q. How were these lines projected on the map? A. Well, the Quigley report reports the total oil, rather than that above 15 gallons per ton. And so this is--his report is a total oil shale report. In other words, he calculated in some instances the amount of oil where the grade was very low.

Q. I see. Then in putting the red lines on the map you utilized basically the Quigley report, is that correct? A. And also--yes, basically. And additional information.

Q. And the additional information which you have referred to-- A. Yes.

Q. Part of which is represented by the figure encircled where you have utilized subsequent information to verify the Quigley report? A. Yes.

MR. NIELSON: We would offer 93--93 has been received.
We would offer 93A.

MR. KLEMM: May I voir dire this witness?

THE COURT: Yes, you may.

MR. KLEMM: Isn't it true, Doctor, that you've copied
the overlay from the Quigley report?

[825]

THE WITNESS: Well, not directly, but it's essentially
the Quigley report, yes.

MR. KLEMM: And the numbers also came from the Quigley
report, didn't they?

THE WITNESS: Yes.

MR. KLEMM: As a matter of fact, the Quigley report con-
tains a map, does it not?

THE WITNESS: Yes.

MR. KLEMM: And that is basically what you put on that
overlay, isn't it?

THE WITNESS: Yes.

MR. KLEMM: I'll object on the grounds that this is not
based on his own knowledge. It's based on the Quigley report,
which is not in evidence.

MR. NIELSON: May I ask just a question or two?

THE COURT: Yes.

Q. (By Mr. Nielson) The numbers encircled, Dr. Chris-
tiansen, did they come from the Quigley report? A. No, they
came from the Bureau of Mines Investigation.

Q. And I believe you have already testified that in
your opinion they verify the accuracy of the Quigley report?
A. Yes, sir. They came mainly from the Bureau report 6420.

Q. I'll ask you, Dr. Christiansen, if you have any
knowledge as to the source of the figures contained in the
Quigley report. A. Yes. All of the information, or most of
it, came from

[826]

the Bureau of Mines Investigation, 5081.

Q. And have you examined that publication-- A. Yes. I've examined every figure and looked at every log.

Q. And have you verified the accuracy of the figures used in the Quigley report? A. Yes.

* * * *

Q. (By Mr. Nielson) Now, Dr. Christiansen, could you indicate for me what sort of a computation you came up with relative to the reserves on the reservation? A. For example, in Unit 1, which is the--

Q. Well, let's not do it, for example. If you've got units here, let's have it for each one of them respectively.

A. Unit 1 I tabulated the Indian land and calculated reserves of that unit of 4,725,000,000 barrels of oil. This

[827]

is the oil under their land based on the billion barrel contour.

Q. Now, in determining what was Indian land, how did you go about determining what was Indian land, Dr. Christiansen?

A. Well, I used the map, Exhibit No.--

Q. No. 116? A. 116.

Q. And which shaded portions did you-- A. I examined the red portions and the blue and calculated the acreage under each contour.

Q. Does the figure you just gave us for Unit 1 include both the red and the blue? A. Yes.

Q. I'll ask you, Dr. Christiansen, did you undertake to compute those two colors separately?

* * * *

A. Yes, I did. I tabulated them separately.

Q. (By Mr. Nielson) I'll show you what has been marked as Plaintiffs' proposed Exhibit 118 and ask you if that is not in fact a summary of the tabulation which you made. A. Yes, it is.

Q. And it contains a breakdown as to the red and the blue; is that correct? A. Yes.

[828]

Q. Maybe we could refer to that while we go through these other sections. Now, as to Unit No. 2, what did you come up with? A. 11,490,000,000 barrels under the red and blue land.

Q. Could you give us the breakdown as between the red and the blue? A. In the blue was 2.1 square miles. Under the red about nine--ten square miles.

Q. All right. Now, going to Unit No. 3, could you give us the same figures for that unit? A. Well, in the red unit, ten square miles. And the blue unit, 2.1 square miles. Unit 3, Unit 4, 17.1 square miles under the red and 12.4 miles under the blue. Unit 5, 26 square miles under the red and 16.4 square miles under the blue. Unit No. 6, 45 square miles under the red and 32 square miles under blue. Seven, 42 square miles under the red and 46.5 square miles under the blue. Unit No. 8, 43 square miles under the red, 68 square miles under the blue. And Unit 9, about 40 square miles under the red and 28 square miles under the blue.

Q. I believe you've already indicated that the units that you have reference to indicate merely varying areas of oil content? A. The units represent the area in between the "iso-barrel" lines, and I took an average, of course, in calculating the

[829]

reserves.

Q. Did you also calculate the total number of barrels that comes between these units? A. Yes. Within these nine units I tabulated a total of 220,891,000 barrels of oil, and this represents the total oil, with no cutoff point.

Q. All right. Now, are the total barrel contents of these individual units also broken down in Exhibit 118? A. Yes. I believe they are.

* * * *

Q. (By Mr. Nielson) Now, you've just referred to the fact that the 220,891,000 figure represents the total oil; is that correct? A. Yes.

Q. And that's just within the units that you have referred to? A. Yes.

Q. Is there additional oil content in the shale outside of the units you've had reference to? A. I don't believe I understand the question. This is--this

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is--this includes the total oil under each square mile owned by the--designated by the blue and the red.

Q. All right. I think you've answered my question.

Now, also, as you've been testifying here, Dr. Christiansen, you refer directly to the figure of 15 barrels per ton. Can you tell me what you have reference to in this regard? A. This refers to an arbitrary cutoff point, and within the industry it's customary to consider this as the potentially lowest limit of oil recovery. However, in situ methods developed, the lower grade oil can be recovered.

Q. Maybe we can get to that later on. At least, as I understand you, 15 barrels, or a ton figure, represents what in the industry is considered economically recoverable; is that right? A. That, or above.

Q. All right. Now, have you made a determination as to the total oil shale reserves in the units that you've referred to which are fifteen barrels per ton or more? A. Well, we found that in studying the logs where we had calculations on the total oil in the oil shale and where we had the--we had the Bureau of Mines statistics and assays on the amount of oil in excess of 15 gallons per ton, and although the--we couldn't formulate an equation to represent this, we discovered that--or, I discovered that the 15 plus economic point unit and the total oil reserves above that would equal

[831]

about half of the total oil reserves. In other words, total oil reserves above 15 gallons per ton. In other words, a ratio of 1 to 2. If the total oil is calculated, you can figure that half of that would be about 15 gallons per ton or more. Now, this seems to fit generally well with the data we have.

Q. All right. Did you come up with a figure for the total barrels contained in the 15 barrel per ton of ore-- A. Well, yes. Using this factor, of course, we came up with a total of 110,440,000,000 barrels.

Q. Now, the next question I'll ask you, Dr. Christiansen, can be answered yes or no. Have you undertaken to determine the value of these reserves in place? A. Yes.

Q. Would you tell me how you went about doing that? A. Well, I studied the various sales that had been made of oil land in Utah and Colorado and, on the basis of these sales, knowing the number of acres, and from the drill data, we could calculate the reserves under each tract of land, and we could simply divide the barrels into the dollars paid, and determine them about what each company paid for the oil in place under their land.

Q. Did you in fact study know sales? A. Yes. There is a report in--

Q. Well, before getting into that, Doctor--

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A. Yes. I studied sales. And also the prospectus of one of the major oil shale companies.

Q. All right. Did that include sales data? A. Yes. Interestingly enough--the first sales were--

Q. Just answer the question, Doctor. I believe you have. Now, could you tell me, Doctor, during what period of time the sales that you have reference to were consummated? A. Beginning in 1963, this report, and ending in '64.

Q. All right. Then, if I understand you, I believe your testimony was that you took the sales figures and computed the reserves contained in the land which was purchased; is that correct? A. Yes.

Q. And after making that computation, then what did you do with the information available to you? A. I--I should perhaps make an explanation. In each instance, the amount paid, by the particular company varied. And so we took the transactions which we felt were the least questionable, and we averaged them out.

THE COURT: When you say "we took"--

THE WITNESS: I. I.

THE COURT: --you're talking about the Royal Family?

THE WITNESS: Well, I personally don't like the personal pronoun "I" for some reason.

THE COURT: Well, for the clarification of the record,

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forget your modesty. All right.

Q. (By Mr. Nielson) Then you studied this sales data?

A. Yes. I studied this sales data from every source possible.

Q. And you were just explaining to us that there was a variation. And so you selected certain sales. Could you continue with your answer in that regard? A. Yes, I found a variation ranging from a mill per barrel to a cent and a quarter. And there are some that are higher than that, but they weren't as reliable, we though, as the published report.

Q. I think you're a little bit ahead of us, Doctor. You referred to a mill a barrel, and I don't think you've gotten around to explaining how you came up with that figure. Maybe you could explain that for us, and maybe we could understand the mill per barrel.

THE COURT: Any explanation you haven't made. I thought you indicated--

A. Yes. The general formula I have made:

Q. (By Mr. Nielson) All right. Perhaps I am mistaken. And then with this variation in prices, what did you undertake to do? A. Struck an average, and this average was three and three-quarters mills, which is the factor I used in determining the value of the oil in the oil shale under the lands of the

[834]

reservation.

Q. Now, the sales that you have reference to, Dr. Christiansen, could you tell me if they represent in your opinion sales of lands which are comparable to the lands contained in the Indian reservation? A. They're comparable in this respect, that they--the oil occurs in the same stratigraphic units, the same formations. The oil occurs in about the same stratigraphic range, up to 3,000 feet. The organic material is of about the same composition. It could be extracted in the same manner as, say, the Green River Peance Basin shale. It's comparable in the fact that most of it is below 500 to 1,000 feet in depth. It's true that Peance Basin and the Uinta Basin--and on these factors they are comparable. In fact, you can correlate almost bed for bed between the Peance and the Uinta Basin.

THE COURT: In what respect are the situations incomparable in your judgment?

THE WITNESS: Well, we--there are many changes in lithology. We recognize that. But there are certain markers, horizons, that develop in certain events that are persistent over vast areas.

THE COURT: I'm referring particularly to the economic phases. The disparate nature of the probable costs of removal and refinement and such things as that.

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Are there disparate phases, or are those phases comparable in your judgment?

THE WITNESS: In the southeast--or, the southwest part of the Peance Basin, the Green River formation is exposed over a fairly wide area. And here, of course, the oil could be mined by standard methods. This is also true of the southeastern part of the Uinta Basin. And then, of course, however, the richest

deposits in the Peance Basin are under more than a thousand feet of overburden. And I would judge that this would include about 95 percent of the reserves of that basin. And this is generally true of the Uinta Basin.

THE COURT: What about accessability?

THE WITNESS: Well, this--

THE COURT: And comparable terrain, which would indicate the economic problems?

THE WITNESS: The terrain is essentially comparable. There are deep canyons. Some with streams in. And some are intermittent. So in that sense, the topography is essentially comparable. It's a part that I'd overlooked.

Q. (By Mr. Nielson) All right. Now, Dr. Christiansen, after coming up with this 3 and 3/4 mills per barrel average, I'll ask you if you undertook to calculate the value of the reserves within the Indian reservation. A. Yes. I took the total number of barrels reserved and, of course, multiplied that by the factor of 3.75 mills;

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came up with an overall total value in place--

MR. KLEMM: At this time, your Honor, I'd like to object. No proper foundation laid for the figure that he came up with. The question--the answer is not responsive to the question. The question was whether or not he had made a calculation, and he is now giving us the calculation.

THE WITNESS: Yes, yes.

THE COURT: Well, all right. Your answer is yes?

THE WITNESS: Yes.

THE COURT: All right.

Q. (By Mr. Nielson) Would you indicate for me what the calculation was?

MR. NIELSON: Thank you, your Honor.

Q. (By Mr. Nielson). Could you give me the value which you computed for the oil reserves in place, Dr. Christiansen?

A. Yes. \$414,150,000.

Q. Now, Dr. Christiansen, are there other minerals contained in the Green River formation other than oil shale? A. Yes, it's a producer of oil and gas, along with associated formations in the area.

Q. Well, are there any minerals in addition to oil and gas and the oil shale in the Green River?

THE COURT: Haven't we gone into this? It does seem to me that we spent a good deal of time in dividing all of the different types of minerals; in fact, went over it more than once.

MR. NIELSON: My understanding, your Honor, is that I believe Dr. Christiansen did give an answer which was not responsive relative to the subject matter I have in mind, which was stricken; and I would like to go into the matter.

THE COURT: Well, why don't you direct attention to that subject matter?

Q. (By Mr. Nielson) Dr. Christiansen, directing your attention in particular to dawsonite, is there dawsonite contained in the Green River formation?

[839]

A. Yes.

Q. Will you indicate for me what knowledge you have relative to the presence of dawsonite? A. There is one locality in the Uinta Basin where dawsonite has been recognized, and that's near Duchesne.

THE COURT: Before we go into that, perhaps we should take a fifteen-minute recess.

(Recess.)

MR. DUNCAN: Your Honor, may we at this time have leave of court to call out of order Mr. Clarence Justheim, who is here pursuant to subpoena, as to two or three questions?

THE COURT: You may.

CLARENCE I. JUSTHEIM called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

THE CLERK: Would you state your full name, please?

THE WITNESS: Clarence I. Justheim.

DIRECT EXAMINATION BY MR. DUNCAN

Q. What's your business, Mr. Justheim? A. Mining, oil, and am president of Justheim Petroleum Company.

Q. Now, have you had occasion this year to sell interests in certain Utah oil shale leases within the counties of Uintah and Duchesne?

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A. Yes.

Q. And to whom did you sell them? A. Mr. McGrath.

Q. I show you what has been marked for identification as Exhibit 119 and ask if this is the schedule of leases you sold and the acreage involved. A. Yes.

Q. And you've reproduced the original from which this is taken and have it with you today? A. Correct.

Q. How much did you sell one percent of these leases to Mr. McGrath for? A. We sold one percent overriding royalty on these 43,762.44 acres to our group for \$75,000.

Q. How much is that per acre? A. That is at the rate of \$1.70 per acre per one percent.

Q. Or \$170 an acre? A. Or at the rate of \$170 per acre for 100 percent.

Q. Did you have occasion to have computed the known reserves under these leases? A. No. But--no.

Q. What were the reserves, if you know? A. It is stated by the Bureau of Mines in that area from Laramie, Wyoming, in their production papers that they put out, and there are known records that anybody can get at

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approximately 100 million barrels per section.

Q. Per square mile? A. Or 640 acres.

MR. BERTOCH: I object to that testimony, your Honor, on the grounds it's hearsay and ask that it be stricken.

THE COURT: The objection is sustained. The last answer may be stricken.

Q. (By Mr. Duncan) Mr. Justheim, in negotiating with Mr. McGrath did you determine what assumption as to oil reserves you were making for purposes of bargaining in the sale of this one point? A. He came to us.

Q. Yes. But my question is, what, if any, assumption of reserves did you make on these leases in negotiating with Mr. McGrath? A. None.

MR. DUNCAN: We'll offer Plaintiffs' Exhibit 119.

THE COURT: It will be received.

(Plaintiffs' Exhibit No. 119 is received in evidence.)

Q. (By Mr. Duncan) In your negotiations with Mr. McGrath, did you discuss the reserves on these leases? A. Yes.

Q. In negotiating with him did you arbitrarily determine what your assumption would be as to the barrels per square

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mile? A. Yes.

Q. And what was that?

MR. KLEMM: I'll object. No proper foundation has been laid.

THE COURT: You may answer.

A. 100 million barrels per section.

Q. (By Mr. Duncan) Do you mean per section, sir, or per square mile? A. Per square mile or section, or 640 acres.

MR. DUNCAN: All right, sir. No further questions.

CROSS-EXAMINATION BY MR. BERTOCH

Q. Mr. Justheim, what is the business of the Justheim Petroleum Company? A. Repeat that, please?

Q. What is the business of the Justheim Petroleum Company? A. They are a holding company to do business in mining and oil and--

Q. Is that company particularly interested in oil shale? A. Well, they were, but in view of the fact--may I go on?

Q. Yes. Q. But in view of the fact that we have the

patent under control of nuclear power to produce oil from oil shale in the United States and Canada, in situ, we felt we didn't need

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to keep oil shale, because we can treat oil shale with nuclear power or nuclear reactor under power patents.

Q. Then, having these patents, you made some study then of the oil shale situation from a commercial standpoint; is that right? A. Well, we did that before the patents were issued. But, yes.

Q. Yes. Has there ever been a barrel of oil produced from oil shale in Utah as yet? A. Oh, yes.

Q. When was that? A. Union Oil had quite an extensive operation. Pardon me. That's Colorado.

Q. Yes. That's in Colorado. So there's never been a barrel produced in Utah, has there? A. Except at the United States Bureau of Mines in Laramie in their test work.

Q. At Laramie? A. Wyoming.

Q. Yes. How long have we known about the fact that there was such a thing as what we call oil shale? A. Oh, I've known about it for fifty years.

Q. And the industry, the petroleum industry, has known about it, then, for at least fifty years; is that correct? A. At least.

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Q. Yet, oil shale has never been produced commercially as yet, is that right? A. I believe there was a company in Nevada who treated oil shale at a small profit per ton.

Q. Do you recall when that was? A. Well, it was about--I came to Utah in 1922, and I'd say in the neighborhood of 1927.

Q. Has that company produced anything commercially since 1927 as far as you know? A. Not that I know of.

Q. Is there any known or accepted process as yet for the production of oil from oil shale? A. Union Oil has produced a process of mining oil shale and will allow anybody to use their process at 40 cents per barrel royalty to Union Oil. But that is a mining operation.

Q. And nobody has saw fit to use Union's process as yet? A. So far no one has.

Q. In fact, there is considerable dispute in the industry as to what would be the best process of producing oil from shale; is that true? A. I don't think there is any dispute, but it costs a lot of money to treat oil shale and to develop the idea of nuclear power, which will be and is the

consensus of opinion that it will be, because it is cheaper to use nuclear power than fossil fuel.

Q. Yes. It is your particular philosophy, and you are an

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exponent of the idea, that the best method will eventually be the use of nuclear power; is that correct? A. In situ.

Q. Yes. Now, of course, there are some who disagree with that; is that correct? A. No. I haven't heard anybody disagree. It's a matter of money.

Q. And as yet, nobody has been able to come up with enough money to make it commercially practical as yet; is that correct? A. I'd better answer yes or no, hadn't I?

THE COURT: Well, you should answer yes or no if a complete and honest answer may thus be indicated; but you're entitled to qualify, if a yes or no answer wouldn't be complete and honest and accurate.

THE WITNESS: Thank you, judge. I would say that J. Paul Getty, Gulf Oil Company, and Aluminum Company of New York are contemplating the process of nuclear power right now under our patents.

Q. (By Mr. Bertoch) But this is only a contemplation, is that correct? A. At the moment.

Q. Yes. Do you recall what you told me at the table a few minutes ago about the worth of the oil shale commercially at present in the Uinta Basin?

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A. Well, anybody, even--as Judge Christensen would say also, I'm sure, that--

THE COURT: Well, leave me out of it.

THE WITNESS: Okay, Judge.

THE COURT: No one can speak for my judgment. I'll have to do that for myself.

Q. (By Mr. Bertoch) Judge Christensen will have his say later. So you just tell me what you told me at the table.

A. Well, I can't remember word for word. Would you mind asking me the question again?

Q. Yes. Do you recall what you told me a few minutes ago at the table here about your opinion as to the worth of the,

commercial worth of the oil shale in Uinta Valley now? A. I believe I said something like this--that is, until oil shale either in situ or by mining processes--oil shale isn't worth four cents.

MR. BERTOCH: That's all.

A. Until--

MR. BERTOCH: Thank you.

A. I haven't finished, yet.

MR. DUNCAN: Let him finish his answer.

THE COURT: Just a minute. Let him finish.

A. Until the process has been developed economically, and it will take millions of dollars to do this.

MR. BERTOCH: That's all I have.

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CROSS-EXAMINATION BY MR. KLEMM.

Q. And as yet that hasn't been done, has it? A. No.

Q. Now, Mr. Justheim, tell me offhand where this property is located that you sold. Is there any in the State of Utah? A. It's all in the State of Utah.

Q. Is it-- A. In the Uinta Basin.

Q. Is there any in the land within the perimeters of the Indian reservation? A. I don't think so. Close thereto, but I don't think there's any in the Indian reservation, or we wouldn't have been able to sell it.

Q. Where did you get that from? A. These are state leases from the State of Utah.

Q. You obtained state leases from the state, and you've sold an interest in these state leases? A. And we sold these state leases to Husky Oil, Shell Oil, and Pan American. And these companies paid us--gave us royalties, and it's this royalty which we sold to Mr. McGrath.

Q. And you had a one percent royalty? A. One group sold one percent that we had.

Q. And you sold it to Mr. McGrath. A. Yes.

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Q. So you have no further interest in the royalty? A. No. Don't want any.

Q. You don't want any? A. Because we have the patents to treat oil shale. So we don't need any oil shale. We'll treat anybody's oil shale with our patents when they're developed.

Q. But as yet, they're not developed? A. Correct.

Q. And you needed the money to develop this. So you sold your royalty interest; is that right? A. We didn't sell it for that purpose. We just wanted to get rid of the shale.

Q. Wasn't that important to you to have the shale? A. We could see, being in business for as long as we have, that it wasn't percentage-wise good for us to keep shale and pay rentals and royalty--rentals, because we have the idea, which when developed, will treat anybody's shale, and the shale we sold to McGrath.

Q. But it isn't worth the cost of keeping those leases up to date? A. Yes, it would be worth the cost.

Q. It wasn't worth it to you? A. In our case, we didn't want any more shale, because we have the idea to work it, which is more valuable than the shale itself.

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Q. You don't have any federal oil leases, then, oil shale leases? A. No.

Q. They're all state oil leases? A. I don't believe anybody has any federal oil shale leases. They either own the lands outright, or they don't have any. And I think there are people fighting today to obtain oil shale patented lands from the Government, but there are no leases from the Government. That's what it's all about at the present time with the Interior Department and Mr. Udall.

MR. KLEMM: I think that's all I have.

REDIRECT EXAMINATION BY MR. DUNCAN

Q. Mr. Justheim, is Justheim Petroleum Company the owner of U. S. Patent 3,237,689 entitled, "Oil Shale in Situ--"
A. In situ.

Q. In situ? Thank you. To produce light oils and gasoline using a nuclear reactor as the source of heat? A. That's right.

Q. That patent hasn't been issued? A. That's issued, and the Canadian patent.

Q. And the Canadian patent also issued to Justheim Petroleum? A. Yes.

Q. 764,769?

A. That's correct.

Q. They are issued to you? A. They are issued to us. And we own them 100 percent.

Q. Pursuant to the subpoena issued upon you, did you bring any other transactions involving oil shale? A. No other transactions.

MR. DUNCAN: Thank you.

MR. BERTOCH: No other questions.

THE COURT: Apparently that's all. You may step down. Will you resume the stand, Dr. Christiansen?

* * * *

DIRECT EXAMINATION (continuing) BY MR. NIELSON

Q. Dr. Christiansen, I'd like to refer just for a moment again to 118, please, which was a summary of your computations of the oil shale. It's been brought to my attention there is an apparent mathematical error on page 2 at the bottom. Would you verify that's correct? A. It's a typographical error. A clerical error.

Q. Yes. And I will show you now what purports to be a corrected page 2. Does that make the correction in that mistake?

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A. Yes, it does.

Q. And page 2, the corrected page 2, is in all other respects the same as the original? A. Yes, as far as I can see.

* * * *

Q. (By Mr. Nielson) Now, also, Dr. Christiansen, before getting too far away from the subject of oil shale, in discussing oil shale, we have been discussing the Green River formation. I will ask you if there is any oil shale in any other formation within the Uinta Reservation. A. No.

Q. Is there any oil in any of these-- A. Yes. There is an oil in a number of other formations.

Q. And in making your computations, have you attempted to calculate the amount of oil in these other formations? A. No, I haven't.

Q. Now, we had just gotten to the point of discussing

dawsonite, Dr. Christiansen; and I believe you indicated that you were familiar with some discoveries of dawsonite in the Green River formation. Could you tell me about that? A. Well, the lower part of the Green River formation has this disseminated sodium aluminate, carbonate, in fairly large quantities. This is in the Peance Basin. It's been reported

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in the Uinta Basin.

Q. To your knowledge have there been any studies undertaken to determine the amount of dawsonite in the shale? A. Yes. There is a publication by the University of Wyoming that lists a specific hole and the analysis, and the reported reserves are indicated in that publication.

Q. Will you give me what the reserve figures are? A. In the particular area where they drill, they discovered within a square mile I believe it was 42 million tons of Al_2O_3 .

Q. And could you translate that into a comparison with respect to the known reserves in the United States? A. I think the known reserves of this compound is about 30 million tons.

Q. All right. Now, Dr. Christiansen, I'm going to show you what has been marked as Plaintiffs' proposed Exhibit No. 80, a copy of Forbes Magazine for March 1, 1967, and I'll direct your attention to a one-page article appearing on page 25 entitled, "There is Aluminum in That There Oil." Are you familiar with that particular article, Dr. Christiansen? It's just one page. A. Yes. I think I have a copy of this.

Q. In your opinion, Dr. Christiansen, does this article correctly state the facts relative to the presence of dawsonite in the oil shale?

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* * * *

Q. (By Mr. Nielson) All right. Dr. Christiansen, I think it would be helpful if we limited the examination in that fashion. Now, on the 6th, before the recess, you also identified a member of other minerals which were in your opinion present in the Green River formation; is that correct? A. Yes.

Q. Now, in making your computations of the value of the oil shale in place, have you also undertaken to evaluate the other minerals contained in the same formation in place? A. No.

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Q. And is there any particular reason why not? A. We have insufficient data to make that evaluation.

Q. All right. Now, Dr. Christiansen, you've previously indicated that in your opinion the oil and gas is the mineral which is second in the order of importance in the Green River Basin. Is that correct? A. Yes.

Q. All right. Have you undertaken, Dr. Christiansen, to make a determination of the value of the oil and gas in place in the Uinta Reservation? A. No, I have not.

Q. Have you conducted any study at all relative to the value of oil and gas out there? A. Yes, I have.

Q. Will you tell me what you did? A. I made a survey with the assistance of Mr. Robert Konkell here, who is a consulting geologist, a survey of all of the sales, the bonuses paid, from leases on the Indian reservation. And, furthermore, I obtained information from the Indian Service in Fort Duchesne.

Q. Dr. Christiansen, I'll show you what has been identified in these proceedings as Plaintiffs' Exhibit No. 53B, which is a letter from the Commissioner of Indian Affairs to the Area Director, and it has attached to it some adding machine tapes. Did you also have an opportunity to examine the

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computations on the addition here, as well as the contents of the letter itself? A. Yes.

Q. And did you take that into account in making your calculations of the oil and gas in the reservation? A. Partially.

Q. All right. Any other information which you took into account? A. I have the descriptions of the land that was leased, beginning in late '63 and extending into '65, showing the companies that lease the land, the bonuses paid, and the acreage that they leased.

Q. Have you totalled the amount--now, what period of time does this cover, Dr. Christiansen? A. Well, 1963 to '66.

* * * *

Q. (By Mr. Nielson) Dr. Christiansen, you referred to a study which you performed in connection with Mr. Konkell. Is that right? A. Yes.

Q. And did you obtain as a result of that study some figures relative to rentals, bonus, and royalty on these Indian lands? A. Yes, I did.

Q. All right. Now, what was the source of that

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* * * *

Q. (By Mr. Nielson) Dr. Christiansen, you referred to the Utah Oil Report. Could you tell me how often the Utah Oil Report is published? A. Well, it's--I believe it's varied. I'm not certain as to the frequency of that.

Q. Well, approximately how frequently is it published? A. Well, I understand at one time it was a weekly publication, but I'm not certain of that.

Q. And the information which you and Mr. Kunkel compiled was taken from the Utah Oil Report-- A. Most of it was taken from Petroleum Information Corporation that has a standard publication which is relied upon by the industry and it is a custom to use.

Q. How often is that particular publication issued? A. I think that's a weekly publication.

Q. All right. The study which you made included all of the Petroleum Information Publications during the period from 1963 through 1966? A. We didn't have figures on the first part of '63, but the last part and up through to '66.

Q. Now, you don't have those individual weekly publications with you now, do you? A. No, I don't. But they're available in all libraries.

THE COURT: By whom is the Utah Oil Report published?

THE WITNESS: Well, I'm--this is a publication that

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we do not rely on; that is, I wouldn't, personally. So we went mainly to this Denver source. About 99 percent of this--

THE COURT: And that is the--what?

THE WITNESS: That's the Petroleum Information Corporation.

THE COURT: And that's a publication that publishes information concerning developments in the petroleum industry?

THE WITNESS: Yes.

THE COURT: And in what form is that published?

THE WITNESS: That's published in a bulletin form, indicating the, in certain parts of the bulletin, the sales that have been made during--

THE COURT: How often?

THE WITNESS: Well, I think this was a weekly publication.

THE COURT: And it's a private corporation?

THE WITNESS: Yes.

THE COURT: Do you know where it gets its information?

THE WITNESS: Well, there are a number of sources. The petroleum industry has a very effective procedure, and it's through this and other publications that they rely on.

Q. (By Mr. Nielson) I ask you, Dr. Christiansen, if the Petroleum Information Bulletin that you've referred to is customarily utilized by people in the oil and gas industry

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and relied upon by them as being accurate? A. Yes.

Q. Now, do you use it yourself and so rely on it? A. I refer to it periodically. I don't subscribe to it, but it's in our library.

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* * * *

Q. (By Mr. Nielson) All right. Now, Dr. Christiansen, in studying the oil and gas resources of the reservation, did you take any other factors or information into account? A. In connection with the--

Q. Oil and gas? A. Oil production and the leases and bonuses?

Q. Well, in connection with oil and gas in general, did you study-- A. We've been studying this for many, many years. The oil potential and the gas potential of the Uinta Basin has just been touched.

Q. You mean in the way of studying the information? A. The construction and stratigraphy and favorable potentials of production.

Q. And you're referring to the general information we conferred about on October 6, is that right? A. Yes.

Q. Anything else? Any books or publications that you

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referred to in studying the oil and gas resources of the Indian Reservation? A. Yes. There are special guidebooks to the geology of Utah. And the Uinta Basin. There are professional

bulletins written on the geology of the Uinta Basin. There must be forty or fifty different sources of information on the structure, stratigraphy, and general conditions of the Uinta Basin.

Q. And you referred to all of those in studying the oil and gas problems? A. Yes.

Q. All right. Now, based upon all of this information, your study of the oil statistics bulletins, the studies of the-- your personal studies that you have referred to, and the publications which you have had reference to, do you have an opinion as to the present value in place of the oil and gas in the Uinta and Ouray Reservation?

* * * *

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A. Yes.

Q. And would you tell me what that opinion is?

* * * *

THE WITNESS: My opinion is that the value of the unleased land, plus the value of the leased land, plus the value of the royalties that are coming in total \$50,136,000.

Q. (By Mr. Nielson) All right. Now, Dr. Christiansen, before we recessed on October 6, we had referred to a map and overlay, which are marked Plaintiffs' Exhibits 93 and 93C, and I believe you testified at that time that the shaded portions represented coal reserves. Is that correct? A. Yes.

Q. And you also indicated that you would at the recess put some numbers on this map relative to the volume of the coal reserves. Have you done that? A. Yes.

Q. And I'll direct your attention now to the numbers. You have township and range, a list of townships and ranges, and

[866]

after those figures, the first one is Township 1 North, Range 8 West, and the figure is 8,211,000. A. Yes.

Q. Could you tell me what that 8,211,000 represents?

A. That represents the tons under the Indian land in that township.

Q. Is that down to 3,000 feet? A. Yes.

Q. And similarly, the additional figures there also represent tons in the respective townships? A. Yes.

Q. And you have totalled those up. Could you tell me what the total is? A. The total is 381,919,940.

Q. I see. You have a total of-- A. Both the--
Q. --of the two areas? A. I assume that we're going
down to that.

Q. All right.

[867]

* * * *

Q. (By Mr. Nielson) Dr. Christiansen, based upon your study of this industry, the coal situation, and the reserves of the reservation, do you have an opinion as to the value of that coal in place, the coal you've already identified? A. Yes.

Q. Would you state what your opinion in that regard is?

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* * * *

THE WITNESS: Yes.

THE COURT: All right.

Q. (By Mr. Nielson) All right. Will you tell me what additional factors or information you took into account? A. The data that I've collected personally in investigations of this coal property.

Q. Anything else? A. No.

THE COURT: I suppose you took your general experience in the field and training in the field of--

THE WITNESS: Yes, I did.

THE COURT: --of economic geology?

THE WITNESS: Yes.

THE COURT: All right.

Q. (By Mr. Nielson) Over what period of time have you personally been familiar with the coal lands we're now talking about? A. Well, a period of at least twenty years.

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Q. All right. Now, based upon that information, knowledge, and your particular expertise, do you have an opinion as to the value of the coal lands in the reservation? A. Yes.

Q. Now, I'll ask you to indicate what you opinion in that regard is as to the coal in place.

MR. BERTOCH: I'll object for the record, on the grounds not sufficient foundation laid.

THE COURT: Overruled.

A. \$57,287,991.

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* * * *

Q. (By Mr. Nielson) Now, Dr. Christiansen, there is the one additional exhibit here which we have not as yet identified and that is marked as Plaintiffs' Exhibit No. 98. Will you tell me what that represents? A. (By Dr. Christiansen) That's a geologic map showing the surface distribution of the gilsonite veins southeast of the reservation and extending into the reservation.

Q. Will you tell me how the gilsonite veins are portrayed on that map? A. They're portrayed by the red lines that strike generally northwest-southeast.

Q. Did you project those red lines onto the map yourself? A. They were drawn on from--enlarged from the map which we cut up and pasted on this display.

THE COURT: You haven't answered the question, Doctor. Did you do it yourself?

THE WITNESS: Yes.

Q. (By Mr. Nielson) And does that exhibit in your opinion, Doctor, fairly portray the gilsonite veins as exposed on the surface on the reservation? A. Yes:

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* * * *

Q. (By Mr. Nielson) Now, in making your computations, however, you have not placed a value upon gilsonite, have you, Doctor? A. No.

Q. Is there any particular reason for that? Well, let me just ask you. Is it possible for you to do so? A. Yes, it would be possible, but it would take a lot of time and energy, because many of the veins are under claims, rather than being

on Indian land.

Q. But at any rate you have not done it?

[875]

* * * *

CROSS-EXAMINATION BY MR. KLEMM

Q. Dr. Christiansen, it's elementary, isn't it, that before this property can be valuable to anyone, it must be owned by that person; isn't that correct? A. Yes.

MR. DUNCAN: We'll object to that, your Honor, as argumentative.

THE COURT: The answer may stand.

Q. (By Mr. Klemm) And if the Ute Indian Tribe owns no oil shale rights, then the oil shale would have no value to them, would it? A. No, it wouldn't.

Q. Now, Doctor, the value of land or in-place minerals would be affected by many things, wouldn't it? A. Chiefly by what people will pay for it.

Q. Well, it would be affected by its location, too, wouldn't it? A. Well, not necessarily.

Q. Well, look, you've talked about value of oil shale in the area of the reservation, haven't you? A. Yes. As well as the Peance Basin.

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Q. Well, the Peance Basin isn't involved in this area, is it? A. But we've referred to it in our discussions.

Q. Yes, we have. And you've talked about the value of petroleum in that area, haven't you? A. Yes.

Q. You've talked about the value of coal in the area, too, and dawsonite in the area; isn't that correct? A. We didn't talk about the value of dawsonite. We suggested that it probably occurred there. We have one core that showed dawsonite. We pointed to the potential of dawsonite as indicated by the drill holes in the Peance Basin.

Q. Now, how far is the Peance Basin away from the reservation? A. Oh, I would judge about a hundred miles or less. Of course, it was continuous basin the time the formations developed.

Q. So your estimate as to any dawsonite would be based on what went on or what was found nearly a hundred miles away? Is that correct? A. Except that we have one report of dawsonite in the Uinta Basin, and the deeper parts of the basin haven't

been explored.

Q. All right. So any evaluation you make of dawsonite would have to be based on those factors we've just mentioned?

[877]

Is that correct? A. What factors were they, now?

Q. Well, the one that you just said. A. Well, we didn't evaluate it, because we didn't have sufficient information to evaluate it.

Q. That's right. Exactly. And that was the case with a number of the types of minerals that you mentioned here today or mentioned last October 6, wasn't it? A. No.

Q. Well, there's not sufficient data in some of these minerals to even make an evaluation. A. On those that we made evaluation of, we have the data to make an evaluation.

Q. But you didn't make an evaluation on some of those you mentioned on October 6. A. Because we didn't have sufficient data to make the evaluation.

Q. Exactly. And that is correct, isn't it? All right. Now, the value of whatever minerals are found in this property on the reservation would be affected by the transportation availability, wouldn't it? A. Not at this stage, in my opinion. We're dealing with a potential resource. We're dealing with properties that have oil underneath them. We're dealing with properties that have been bought and sold. And it seems to me that this determines at this stage the value of the property: what you

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can sell it for.

Q. All right. So you're just dealing with the potential value of the property, aren't you? A. No. No. I'm dealing with the reserves, which can be calculated, I'm dealing with sales that have been made, and reserves under those lands that were sold, calculated to a value of a certain amount per barrel in place at this time, when the property was sold. And so we're not speculating on this at all. Transportation, mining, metallurgy, is all speculation. We're dealing with facts here. We're dealing with the fact that lands have been traded. We're dealing with the fact that the Bureau of Mines reports indicate there's a certain amount of oil under that ground. And this was our basis for evaluation of the oil shale.

Q. Then you have not taken into consideration in your deliberations in arriving at these figures the cost of mining any of these minerals, have you? A. I have taken into consideration--

Q. Would you just answer-- A. Yes.

Q. Would you just answer the question, please-- A.

Yes.

Q. --and stay with the question, Doctor? A. Yes. I'm sorry.

Q. So you say you have taken into consideration?

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A. Yes.

Q. In what way? A. In not--not related to the evaluation, but one cannot help but get interested in the possibilities, the potential of this. And so, I have read all the literature. I have examined the professional papers, the popular articles, the Government's papers, and this is all interesting and speculative.

Q. All right. A. I'd be glad to know, are these potentials--and I can quote you the figures, if you'd like them--the speculator figures on the mining costs and the milling costs and the beneficiation costs and all the other costs involved--I'd be glad to do that. But it isn't related specifically to this evaluation we're dealing with.

Q. All right. Then, Doctor, whenever it comes time to get this stuff out of the ground, you have to start considering these things, wouldn't you? A. Yes.

Q. You'd have to start considering the cost of it, in petroleum drilling, wouldn't you? A. Yes.

Q. Are you aware of the cost of drilling? A. To a degree, yes.

Q. How much does it cost to go down a foot on oil drilling? A. Well, it depends on how deep you're drilling and the

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kind of rock you're in and the kind of mud you have to hold and how far you're in from a good highway and the costs of labor, the costs of food. And there are just an infinite number of things that would influence the cost, and they're changing from day to day.

Q. That's true. You say they are changing from day to day? A. Yes.

Q. You would have to take those changes into consideration when you decided to start removing the petroleum from the ground, wouldn't you? A. Yes, if this were involved in the problem. But I'm not buying, and we're not involved in this problem, in my opinion, in the valuation of this land.

Q. All right. You said you have studied these things, haven't you? A. Yes.

Q. So let's see if we can go along that line. So transportation, the nearest point of transportation, would make a difference as to whether or not you would mine this stuff, wouldn't it? A. Yes. And this is a very interesting question. Speculative, though.

Q. And whatever your market might be in the area would have an effect, wouldn't it? A. Yes.

Q. As a matter of fact, there's a great deal of coal, I

[881]

think you testified, on the reservation; but are you aware that none of it has been mined for a minimum of twenty years? A. That isn't true. Some has been mined. In the Red Creek area.

Q. Has there been any mined on land owned by the Indians to your knowledge? A. I'm not certain of that, but there has been coal mined in the northeastern part and up in the Red Creek area.

Q. All right. But the coal that you're talking about, did you include the Red Creek area in your-- A. Yes. That has the largest tonnage.

Q. Do you know how much as been mined in the last ten years? A. No, I don't. I could find out, however, if this were important.

Q. Now, Doctor, the availability of water would also be important in this area, wouldn't it? A. If you anticipate a plant operation or a hydroelectric plant, yes, water is important.

Q. Do you know how much water it would take to get a barrel of oil from oil shale? A. Not precisely, but it would probably take a lot.

Q. It would take a lot more water than you would get oil, wouldn't it? A. Well, as I say, these are very interesting questions, but I can't see how they relate to the evaluation of this ground.

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THE COURT: Your point is that those questions relate to the possibility of future profits from the operation of the land?

A. Absolutely.

THE COURT: And your testimony has been devoted to the present reasonable value of the land based upon what you regard as established reserves and what comparable property in view of

those reserves is selling for now? Is that correct?

THE WITNESS: Your Honor, that's true.

THE COURT: Isn't that the conclusion you draw?

THE WITNESS: Your Honor, that's the distinction.

Q. (By Mr. Klemm) Well, Doctor, let's go to your own particular evaluation, then. I think you testified that you have used the Quigley report in preparing your oil shale; is that correct? A. That's part of the information I've used.

Q. You copied the map almost verbatim, didn't you? A. But I've added to it the more recent data.

Q. But you have referred to that report in making your evaluation, haven't you? A. Yes. One would want to refer to everything that bears on the conditions that we're dealing with.

Q. Then I'm going to refer to that report and read a sentence to you. "Whenever it becomes possible to distill oil from the shale in situ, then the entire 2,500 feet becomes important,

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and not just 60 feet." Now, do you recall that sentence in the report? A. Yes.

Q. So isn't it true then that your estimate of value of in situ oil is based on the assumption that a process will be developed to profitably extract the oil from the shale in situ?

A. No, sir. My estimate is based on the calculations made in the study from the Bureau of Mines Analysis and on the basis of what property is selling for, and it has nothing to do with whether oil shale is utilized or not. And as you pointed out, this will become a critical problem when the time arrives that a company wants to spend two or three hundred million to go into a plant. Water, topography, transportation, power, the cost of materials, the present economic situation in the country in connection with other costs that are important in an operation

like this; then this would become extremely complicated. There is no question about it. And market studies would have to be made, pipeline studies, all of the facilities, housing facilities, water, culinary water, the water necessary for the industry itself, communications of various sorts, telegraphs, radio, telephone--this all gets involved. But, as I pointed out, we're not involved in this, in my opinion.

Q. Then it's possible, isn't it, that it may never be

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profitable to mine any of these minerals that you've talked about? A. This is possible, but I don't think it's probable.

Q. At the present time there is no economic way to extract oil from oil shale? A. Well, I don't know for sure. Just to what--

Q. Well, do you know of any? A. No, sir, I don't.

Q. Now, will you tell us what "in situ" means? A. Well, it's a term applied to the--a production method which would not involve the removal of the material from the ground, but a process of one sort or another that would act in the ground to recover the desirable materials.

Q. So you're talking about a process that must be developed to get the oil out without taking the shale out of the ground; isn't that correct? A. That's what "in situ" means, yes.

Q. All right. You're not talking about mining the oil shale as you would mine hard rock mining, are you? A. No. That's true.

Q. You're talking about a process whereby you can some way extract that oil from the shale from the rock without bringing the rock out of the ground? Isn't that correct? A. Very good.

Q. Do you know of any such process that could be effectively done today?

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A. No, I don't.

Q. As a matter of fact, the other witness that was here was interested in this type of process, wasn't he?

THE COURT: Well, now, isn't that an argumentative--

MR. KLEMM: I'm sorry. I withdraw that question.

Q. (By Mr. Klemm) So your figure of three and three-quarter mills per barrel is only valid if you can develop a process which isn't yet developed? A. No, that isn't true.

Q. Isn't that correct? A. It's a valid figure based on sales and barrels bought by sales. And, again, if three-quarters of a--three and three-quarters mills has nothing to do with what you're talking about. The end product value might range up to \$3 a barrel. Now, what possible economic significance could three-quarters of a half a cent have on an engineering project? You see, it's insignificant. You can forget about it.

Q. Okay. Now, is there any difference between petroleum and shale oil produced from oil shale? A. Yes. There is a difference.

Q. What is that difference? A. Well, I don't know the detailed chemistry, but the important fact is, naturally, a question that the material derived from the organic substance in the oil shale can be processed essentially in a conventional refinery, and it has

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been, and it's sold on the market. And the automobiles have used it. The lubricating oil and the gasoline that was produced from the oil from the shale, and--

Q. But, Doctor, it's more expensive to refine, isn't it? A. Well, I don't know that. I would assume that it was, or they'd be in the business now producing it.

Q. Well, isn't it true that there are other types of things in the oil that comes out of oil shale that must be removed, different types of minerals and impurities that aren't in petroleum? A. If this was dawsonite, it may prove to be more valuable than the oil itself. This is a potentiality, and that's all we're talking about. We're not talking about facts.

THE COURT: He wasn't asking you that, Doctor. He was limiting his questions to whether there were things that had to be removed.

THE WITNESS: Yes. There would be, definitely. Your Honor, could I qualify this, that in the processes of getting the material out of the oil shale, what we have left is a spent oil shale, which would have all the impurities in. The oil is distilled off. So this doesn't present an immediate problem, as I see it, of removing of any waste materials. This stuff goes right along with the spent shale.

Now, there may be some sulphur, some nitrogen.

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But, as I say, this has apparently been overcome. Some 20,000 barrels have been refined and have been put into the gas pumps and utilized in the industry.

Q. (By Mr. Klemm) Doctor, will you tell us what reserves are? How do you define the word "reserves"? A. Well, that's a measurement of the mineral in place.

Q. Well, will you tell us what "measured reserves" are? A. Well, this varies, depending on the author that you're quoting. A measured reserve would be a block of ground, and this varies from deposit to deposit, which would have rounded outlined sufficient holes and sufficient sampling to be reason-

ably sure that within that area they had a fairly consistent product.

Q. What about "indicated reserves"? What does that mean to you? A. Well, this would be a kind of reserve where you didn't have as much data. You might have had a drill hole or two on the side of it; that the formation was not strong, thick, or continuous, and that you had only partial information.

Q. What are "inferred reserves"? A. Well, this is the least reliable type of reserve in which, based on the geologic setting and other occurrences of similar nature, you would possibly want--and this is "possible reserve"--there's another term that's used for this--would be considered in this category.

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Q. Now, Doctor, what is a "mineral resource"? A. Technically, this becomes very complicated, because the hydrocarbons are not minerals. So this is a misnomer, "mineral resource," to include oil and shale. Technically a mineral is a natural occurring element or compound which is inorganic in origin, and these petroleum oil reserves are organic. So this term is inaccurate, technically, although in general we include the liquid and the gaseous hydrocarbons, as well as the solid hydrocarbons, and our mineral resources. But they're technically not minerals.

Q. What you're saying, isn't it true, that these reserves are minerals or fuel that could be recovered today with the present technology at today's prices? A. No, that is not true.

Q. It's not what you're saying? A. No.

Q. You're not making any attempt to evaluate the prices of technology that exists today, is that correct, in your figures prior to-- A. No, I did not evaluate mining costs, transportation costs, and this multitude of other factors.

Q. Well then, isn't it true that you're in the realm of forecasting, rather than factual evaluation? A. No. The things we've been talking about are factual. What you've been talking about is conjectural, because the

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oil shale industry hasn't been born yet. It's going through the growth stages, but until a plant is in operation, what you're saying is then that the things we're talking about are highly speculative.

Q. Well, all right. Then, the value of these minerals is also highly speculative, is it not? A. It depends on how you view this. If you have the land and someone will pay you for it, and pay you cash for it, then you make a transaction

and it's completed, and the speculation is over, you have the cash in your pocket, and they have the land--

Q. Doctor, you've talked about some pretty fantastic amounts in your testimony in the last two days. A. Oh, I think I've been--

Q. Do you know anybody, Doctor, that would pay those kinds of amounts for the land that you're talking about here?

MR. NIELSON: Your Honor, object to this question. I think it's entirely irrelevant, immaterial. It's argumentative. Of course, we're talking about values. We also assume there is a willing buyer and a willing seller.

THE COURT: I think it's highly relevant to know whether there is a willing buyer and a willing seller. That first part, "You've been talking about fantastic values," really is argumentative; but the latter part, "Do you know whether anybody would be willing to pay that market"--it's

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irrelevant. Maybe not determinative.

Q. (By Mr. Klemm) Do you know anybody that would be willing to pay those amounts for property in the Uinta Basin?

A. No, I don't.

Q. There, in fact, are no such customers at this time, are there? A. I don't know the answer to that.

Q. All right. Doctor, have you ever qualified as a land appraiser? A. No, sir.

Q. You're not a member of any society or are licensed to appraise-- A. No, I'm not.

Q. --property, are you? A. No.

Q. And-- A. If you're talking about real estate, now, surface rights, I presume?

Q. I am. I'm talking about lands. A. You're not talking about mineral resources, are you? If you are, then I'm qualified. If you're talking about the surface rights, then I'm not.

Q. You've been talking about the sale of lands, here, haven't you? A. All I did--I haven't talked about it. I've used the sale of lands to determine the value of the oil that they

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bought at a given price, and how they laid in place.

Q. You're trying to make an appraisal of land values, aren't you? A. No.

Q. Isn't that what you've done here? A. No, I have not. I've tried to determine what reasonable value would be for the oil in place under the surface of the land.

Q. Yes. But you talked about going back and reviewing some sales, didn't you? Weren't you talking about sales of land? A. That's right. Only for the purpose of establishing this value under current market.

Q. All right. In those particular lands were you also talking about surface rights? A. I didn't consider surface rights.

Q. You didn't consider water rights, either? A. No.

Q. You didn't consider improvements on the property, did you? A. No.

Q. You didn't consider anything in regards to surface values, did you? A. No.

Q. So in talking about the sales of those lands, you weren't

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considering those items, were you? A. No. There is an interesting point, since these lands were--

Q. Well, Doctor, just answer my questions. A. Oh.

Q. Now, look, I'm going to refer to these exhibits you used the first day. Now, Doctor, I'd like to refer you to Plaintiffs' Exhibit No. 94 and ask you what this map shows on the surface here. A. Well, that map is the general geologic map of the northeastern part of the State of Utah, and particularly it shows the outcrops of a number of formations that exist in the valley, or the basin.

Q. Now, these are surface outcroppings; isn't that correct? A. Those--each color represents a different formation.

Q. Now, I notice that you've drawn these lines in such a way that two of your cross sections come together; isn't that correct? A. Yes.

Q. I believe it would be cross sections shown on Plaintiffs' Exhibit 94C and 94B. Isn't that correct? A. The two long sections. I think that's correct.

Q. The two long sections come together up in this particular; isn't that correct-- A. Yes.

Q. Up on upper 94?

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A. Yes. Yes.

Q. All right. Now, I note that on the Exhibit No. 94B, it shows that the Green River formation comes to the surface. Would you show us on Map No. 94 where the Green River formation

comes to the surface? A. If you'll look at the map, you'll see that it doesn't come to the surface there. It's covered by younger gravels.

Q. All right. Have you made any changes in the map since October 6? A. Well, I put in the positions of the Indian reservation there, the top of the middle unit, or the Parachute Creek member, which is the shale member, and corrected any other inconsistencies in it.

Q. Were they corrected since those exhibits were received into evidence? A. That tertiary area, yes.

Q. As a matter of fact, the cross section shown on 94C was incorrect when it was introduced into evidence, wasn't it? A. Well, we'd overlooked plotting that tertiary gravel. It's just a general error on the surface.

THE COURT: We should have an understanding, in view of this--

THE WITNESS: Yes. Yes.

THE COURT: Just a minute, Doctor. There shouldn't be changes in exhibits without leave of the Court. The

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invariable rule of court is, without leave of Court, exhibits cannot be altered. Otherwise, exhibits could be tampered with and changed.

MR. NIELSON: This I think is part of the general misunderstanding which we had relative to these exhibits. They were all returned to us by the clerk at the conclusion on October 6, and my records indicated that none of them--and I believe the clerk's records at this time indicated--that none of them had been received in evidence. Now, I was not aware of these minor changes, although I did ask Dr. Christiansen to put the boundaries of the Indian reservation on them; and I would further observe that they were not received in evidence.

THE COURT: All I'm going by, the witness says it was since they were received in evidence; and I think it appropriate to caution counsel, as well as all witnesses, that it would be improper to change exhibits after they're received in evidence, without express leave of Court. I think it's sufficient to indicate that I'm not at this particular time assigning a particular moral turpitude.

MR. NIELSON: But these are the ones that were offered at the very conclusion of Dr. Christiansen's testimony here

today. So they couldn't possibly have been altered after they were received.

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THE COURT: What I've said about the rule still stands.

MR. NIELSON: Yes. I just wanted that to be clear.

THE COURT: All right.

Q. (By Mr. Klemm) They were changed after they were originally made, weren't they? A. Well, this is a common thing--

THE COURT: Wait a minute. He didn't ask that. Were they changed?

THE WITNESS: To the extent indicated. We drew some lines of the boundary.

THE COURT: The answer is yes.

Q. (By Mr. Klemm) Who drew those exhibits for you? A. Well, I asked Ken Thompson, who has worked with me and constructed--

Q. As a matter of fact, he's one of your students, isn't he? A. No, he isn't.

Q. At least, he isn't here today, is he? A. No.

Q. Did he draw the others? A. Well, he helped me with these three.

Q. Well-- A. We worked together.

Q. Did you personally work on 94? A. Yes. I personally worked on all of them.

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Q: All right. Now, let's go to 94B, Doctor, and let's take a look at that one. I see where the map would indicate the difference between California No. 2 Gusher and a bend in the section would be approximately three miles. Would you check that to see if that's correct? A. Let's see. This and this.

Q. California No. 2 Gusher and the bend of the section. Right here. A. It looks like it's about on scale here. It's about three miles.

Q. Is it your testimony that that scale is correct on

that chart? A. Your Honor, could I make an explanation here?

Q. No. Just answer the question.

THE COURT: If the explanation is germane to the question:

A. Yes. You could not choose a single cross section line and include the wells. And so we have to project the wells that are close--or, nearby--into the section to show the positioning of them. And to this extent, yes, they could be off in terms of measurement. I hoped they wouldn't be, but--

Q. (By Mr. Klëmm), Doctor, I'll call your attention to 94B and 94C. Those are made on the same scale, are they not?

A. Yes.

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Q. Now, take a look at the scales, Doctor. One of them says 20 miles, and one of them says four miles. Which one of them is incorrect? A. Well, the one on the right is obviously incorrect.

Q. Quite an obvious error, isn't it? A. Well, this happens.

Q. Well, who made that one for you? A. Well, we both cooperated, and in the drafting I presume the figures were transposed, or I don't know what. I could find out why this error. We have all the papers, sections, and data, and this can be determined.

Q. But at least the exhibit is in error, is it not?

A. Well, a general thing like this in detail would be. What I was trying to depict here was the fact that we have a sequence of formations here that all the professional men of the earth science area would recognize as a reasonable interpretation of the stratigraphic sequence and the structure of the Uinta Basin.

Q. Do you know of any other errors in these exhibits?

A. If we looked with great detail, yes, I could find. In reducing that degree of distance down to specific points, the pen line, you see, or the detail of the topography, would be very difficult to simulate perfectly. And it's not germane to the reason for submitting it. That is, if we're--I can't see what the significance--

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REDIRECT EXAMINATION BY MR. NIELSON

Q. Just a couple of question, Doctor. With reference to Exhibit No. 94C, I'll ask you if it would be possible at this time for you to make a correction in the error which you and Mr. Klemm have discussed. Would you do that at this time?

A. Well, I'd rather get my notes and do it accurately. I'm appalled at this. This is one of those things that make you feel sick when it happens.

Q. But at any rate, the only error that you've discussed there is with respect to the-- A. Scale.

Q. --the legend at the bottom? A. No, not the actual scale, but the indicated scale.

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Q. All right. Fine. Then, despite that discrepancy in the legend at the bottom is it still your opinion that that exhibit fairly, in your opinion, fairly reflects the position of the formations of the Uinta Basin along the line-- A. Yes.

Q. All right. Now, in response to Mr. Klemm's questions, you indicated that you were not aware of the commercial production of any oil shale in this particular region; is that correct? A. Yes.

Q. Are you aware of any commercial production of oil shale anywhere? A. Yes. Oil shale is--

Q. Well, the answer is yes? A. Yes.

Q. All right. Could you tell me where? A. The largest plant is in Manchuria. There are plants, I understand, going up in Brazil, Sweden, Spain, and--

Q. Are you aware of any commercial production in the Soviet Union? A. Yes.

Q. Is there any such? A. Esthonia, there has been commercial production there.

Q. I'll ask you, Dr. Christiansen, if you are aware of the source of the fuel on which the Japanese fleet was powered

[900]

during the Second World War. That can be answered yes or no. A. No.

MR. NIELSON: All right. I have nothing further.

EXAMINATION BY THE COURT

Q. One point, Doctor, that I would like to pursue for my own information. As I understand, in arriving at the per ton

value in place of oil shale, you considered, among other things, the ratio between the acreage purchased in fee and the amount of reserves in that particular acreage? A. Right.

Q. And by dividing, you arrive at the per ton value in place after you had discounted your figure by the economically feasible production? A. That's per barrel.

Q. Per barrel? A. Yes.

Q. Per barrel? A. Yes.

Q. Now, if indeed as a part of the consideration that that fee purchase, the negotiators had considered water right evaluation, for instance, or grazing right evaluation, in determining the purchase price, then the figure would have to be adjusted downward on computed price per barrel because of that additional consideration which the purchasers would

[901]

have considered in the acquisition? Right? A. Yes.

Q. And that just goes to the amount? It doesn't defeat your general formula, but the result would have to be weighed by a consideration of those possibilities? A. Yes. And, your Honor, on this, there is some land--you see, this is on an acreage basis.

Q. Yes. A. There was some land purchased that doesn't have oil under it. They bought a block of land--

Q. Right. You're dealing with averages? A. Yes.

Q. But you didn't give any consideration to the additional consideration that may have been given for improvements which presumably were scarce, but for water rights and for other values a pertinent or intrinsic in the land itself, apart from the oil shale? A. I did not give consideration to that.

THE COURT: All right.

* * * * *

[905]

GEORGE HARVEY HAMILTON called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

THE CLERK: State your full name, please.

THE WITNESS: George Harvey Hamilton.

DIRECT EXAMINATION BY MR. DUNCAN

Q. Will you, Mr. Hamilton, state briefly your education

and professional experience and background? A. I have two periods of education and experience. Before World War II I was a cost accountant for the Standard Oil Company of New Jersey for twelve years, having obtained a degree from the University of North Carolina. After the war I went back to college. I obtained a bachelor of science degree from Colorado College in geology.

Q. What year? A. 1951.

Q. When did you first go to work for the oil company as a cost accountant? A. 1935.

Q. All right, sir. And after you graduated from Colorado College with a degree in geology, where did you go to work?

A. I went to work for the Union Oil Company of

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California.

Q. And where? A. In Denver, Colorado. I worked in western Colorado. I became the district geologist for western Colorado and eastern Utah, and I maintained that position throughout my career with the Union Oil Company of California. In 1955 and '56 I maintained offices in Vernal, Utah. In 1958, I maintained offices in Salt Lake City, Utah. First of 1959 I became a consultant geologist, Salt Lake City, Utah.

Q. What was the nature of your work, briefly stated, while you were employed by Union Oil? A. I evaluated the lands which were submitted to the Union Oil Company of California for value to the Union Oil Company.

Q. Was Union Oil at that time engaged at all in the oil shale development? A. Yes. They are, very definitely. They spent many, many millions of dollars building a pilot plant at Grand Valley, Utah, on many thousands of acres of fee, and also acquired other holdings in oil shale properties. They are one of the leaders of the industry.

Q. Could you state briefly, sir, your professional

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memberships and associations? A. I am an active member of the Society of Petroleum Engineers, Division of the American Institute of Mining Metallurgical Engineers. I am an active member of the American Association of Petroleum Geologists. I am a fellow of the American Association of the Academy for the Advancement of Science. And I belong to a number of the regional geological and engineering societies.

Q. You testified that this plant of Union was at Grand Valley, Utah. Didn't you mean Colorado? A. Grand Valley, Colorado.

Q. You meant Colorado? A. Colorado.

Q. Now, sir, have you had occasion since the time you became a consultant, independent of Union Oil, to render appraisals or opinions or evaluations of oil shale property in the Uinta Basin or adjacent land? A. Yes.

Q. Will you describe or identify for whom these appraisals were made and the nature of the appraisal evaluation or report? A. I made the geologic appraisal and evaluation for the Western Oil Shale Corporation, for the prospectus they were

[908]

preparing for submittal and did submit to the Securities and Exchange Commission for that corporation's existence. I evaluated their state law leases in the Uinta Basin, Utah.

Q. I'll show you what has been marked for identification as Exhibit 120, and ask you if this is what you described in perhaps some more detail--perhaps you can tell us the nature of that evaluation. A. Yes. This is my report. The latest edition to evaluation. It has my name upon it. Uinta and Duchesne counties, Utah, evaluating their state oil shale leases in a variety of scattered state sections throughout the Uinta Basin. It is my report.

Q. It is oil shale in Duchesne and Uinta counties? What is the date on this edition? A. September 26, 1967. It has been updated because Western Oil Shale Corporation has constantly acquired new leases, and I've had to update it for that reason only. Essentially it is the same report as the first one prepared in '65.

Q. And all the data and maps therein were prepared by you or under your direction? A. They were prepared by me.

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* * * * *

Q. (By Mr. Duncan) Mr. Hamilton, in Figure 1, in what has been proposed as Plaintiffs' Exhibit 120, you list certain leaseholds within Uinta and Duchesne counties, do you not, sir? A. Yes.

Q. Can you find that for me in here? A. It is here, sir.

Q. Now, on page 10 you identify certain leases which are--that is, Utah lands in these two counties that are leased by Western Oil Shale Corporation? A. That is correct.

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Q. Now, would you have an opinion as to whether these lands that Western Oil Shale Corporation leased, as to oil shale only, are comparable to those within the Indian Reservation itself? A. They are quite comparable. They adjoin on the northeast and the south, and some slightly southwest. And perhaps one or two of them are within the boundaries of the reservation. Not on Indian lands.

THE COURT: Is your evaluation substantially the same as between one area of land and another?

THE WITNESS: Yes, sir.

THE COURT: So it's more or less a uniform figure in that general area?

THE WITNESS: In that general area. Any reasons for changes are so noted in the report.

THE COURT: What would be an example of some of the reasons for variations?

THE WITNESS: There would be no--the first question is, yes, they're comparable, because the basin is one basin, and the formation is one formation. The center of the basin has richer values, and I contoured those. And the Indians have a center of the basin, as well as everybody else has part of the center of the basin. And

[911]

they also have leaner lands, and so does everyone else. But the entire basin can be considered as a unit, sir, in considering the formation is present throughout.

* * * *

[912]

Q. (By Mr. Duncan) Mr. Hamilton, have you in preparation of this report, Exhibit 120, and other reports, what did you do in order to place a value today? Give us your opinion today as to value of oil shale in the Uinta Basin. A. I examined the best data obtainable, and that is that of the United States Department of Interior, the Bureau of Mines, in Wyoming; analyzed samples from wells, from outcrop, from cores throughout the general area. I used their data as the basis for this report. Also, my client drilled a core hole, and we directly analyzed and the Bureau of Mines also analyzed those

cuttings from the core hole; and this factual data was the major source of the information. I did examine the shale on outcrop personally, where it outcrops. I have done this from time to time, taken samples, and so forth. I also drilled a well when I was with Union Oil Company of California, which is within the confines of the reservation. And we penetrated the Green River formation in the drilling of that. And we submitted the samples to the Bureau of Mines. All of the samples of the Bureau of Mines are public information. They are carefully analyzed.

THE COURT: You've been talking about valuations.

[913]

THE WITNESS: Yes, sir.

THE COURT: On what basis did you make an evaluation?

THE WITNESS: The only evaluation that I have used is-- no. I've used two evaluations. One evaluation is what we call reserves, and this is a figure which represents the amount of oil in place. And I reduced it by 15 gallons per ton or better, and 25 gallons per ton or better in my report.

THE COURT: And that figure is by barrel?

THE WITNESS: And that is by barrels.

THE COURT: Per what unit? Per square mile or section?

THE WITNESS: Yes.

THE COURT: I see.

THE WITNESS: And the only other evaluation I used was the actual transaction that was required to be recorded. The Securities and Exchange required the Western Oil Shale Corporation to record the exact value that they paid for these leases, and that value would be-- is also used to evaluate the current market price of such leases.

THE COURT: I see.

[914]

Q. (By Mr. Duncan) Now, was one of the sources you used this World Oil edition that Dr. Christiansen has referred to for August 1, 1965, page 92? A. Yes. I used that.

Q. What is World Oil? A. World Oil is one of the journals of the petroleum industry.

Q. Is it recognized and accepted and relied upon in the industry? A. Throughout the world.

Q. And the sales that are described herein--and you considered in making your evaluation--are for the years '63-'65? A. Yes.

Q. And they relate only to oil shale lands? A. That's correct.

Q. Now, sir, based on the wells that you have drilled, one within the reservation itself, the technical journals and documents that you have read, the documents you've examined, and your personal inspection, do you have an opinion as to the fair market value of a gallon of oil shale underlying the Indian Reservation during the years 1963-1964?

[915]

A. Yes.

THE COURT: The fair market value of what?

MR. DUNCAN: Of one barrel of oil underlying the Indian Reservation during the years 1963-1964.

Q. (By Mr. Duncan) If you have such an opinion, what is it? A. Yes. Seven mills.

Q. Now, sir, have you had any experience with bituminous sands? A. Yes.

Q. What are they? A. I negotiated the first bituminous sand lease from the State of Utah. I acquired 3,000 acres of bituminous sands--rights under this lease.

Q. When? A. In 1962 I acquired the lease. I sold it in '63.

Q. How much did you get for it? A. I sold it for a bonus of \$3 per acre and an overriding royalty to me of 5 percent. And there was an overriding royalty to the State of Utah under the lease for 5 percent.

Q. In 1963 you sold a \$3,300 lease-- A. a 3,300-acre lease--

Q. 3,300-acre lease. The state royalty was 5 percent,

[916]

and you retained 5 percent and received \$3 per acre? A. This is correct.

Q. How close was this land to the Indian Reservation? A. It was immediately on--or, very close to the Hill Creek Extension, slightly east of same.

Q. And the Hill Creek Extension, is this sort of a--
A. Odd-shaped piece at the bottom.

Q. Drops at the southern end? A. Yes.

Q. What formation, sir, do they find--or, are these bituminous sands located in? A. They're found in the Douglas Creek member of the Green River formation, which is the lowest member of same.

Q. Do you have an opinion as to whether the Douglas Creek member extends under the entire Indian Reservation? A. It extends under the entire Indian Reservation.

Q. Now, you have had occasion, you said, to evaluate properties within the Uinta Basin for several clients, and you've told us about Western Oil Shale. Will you tell us about one McGrath? A. Yes. I evaluated the lands that Mr. McGrath purchased, a one percent overriding royalty interest in--from the Justheim Petroleum Corporation. I determined the reserves

[917]

under every lease thereon.

* * * *

CROSS-EXAMINATION BY MR. KLEMM

Q. Mr. Hamilton, isn't it true that your report and your estimate and evaluation here today is based at least in part upon the development of a process by which oil shale can be mined in situ? A. Please, my valuation of what?

Q. Your evaluation of-- A. My 7-mill figure? Is this what you wish?

Q. Yes. A. That was based on a direct transaction from a willing seller to a willing buyer in 1964 and was reported by me.

[919]

in '65.

Q. Wouldn't the production of such oil through oil shale or from oil shale necessitate some means whereby the oil could be removed while the rock is still under the ground? A. State that again carefully, sir.

Q. Wouldn't the value of oil shale--that is, the potential value--depend at least in part upon the mining of this oil shale through some method which would permit the extraction of oil while the rock is still in the ground? A. Yes.

MR. KLEMM: That's all. One other question.

Q. (By Mr. Klemm) You have a map in here on page 10 of your report. It shows in here that the map was taken from, "The Oil and Gas Possibilities of Utah, Re-evaluated." Is that correct? A. Yes.

Q. As a matter of fact, that particular map is part of a report that was included in a book which was made by him, Darwin Quigley, wasn't it? A. I gave credit for the base map to this report, yes.

Q. So the map comes from the Quigley report? A. Yes.

[920]

MR. KLEMM: That's all.

MR. BERTOCH: No questions, your Honor.

THE COURT: Do you have a judgment, sir, as to any difference in market value per ton of--or, per barrel of oil in place, as between 1963-64 period and the 1966-67 period?

THE WITNESS: Yes.

THE COURT: And what is that opinion?

THE WITNESS: The value would--my 7-mill figure would be ridiculously low, because that was based on an actual transaction only. Mr. Lucas of the Atomic Energy Commission in reporting their experiments show that the use of nuclear power for the extraction--for the fracturing of the rock and then the extraction--would have to come partially from that and other means; the cost of such a device is very low. It means an immense, comparatively speaking--

THE COURT: Well--

THE WITNESS: Yes, the value greatly enhanced today would be the answer to your question.

THE COURT: And your value of 7 mills--

THE WITNESS: Was based on just the transaction of the rights in the lease.

[921]

THE COURT: But would that valuation be--as of what period?

THE WITNESS: As of 1963, the time we're talking of. '63, '64, only.

[922]

THE COURT: Thank you, sir. You may step down.

[923]

* * * *

GEORGE W. HEDDEN called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

THE CLERK: Will you state your name?

THE WITNESS: George W. Hedden.

DIRECT EXAMINATION BY MR. KLEMM.

Q. Will you tell us your address, Mr. Hedden? A. My home address is 3829 East Elm Street, Phoenix.

Q. What is your occupation? A. I work for the Bureau of Indian Affairs.

Q. What position do you hold with the Bureau of Indian Affairs? A. The title is assistant economic development director.

Q. What are your duties in this regard? A. Well, my duties are to coordinate the activities and economic development of the branches and the activities within that division.

Q. How long have you been so employed? A. In this particular position I've been in it since July 1958.

Q. What did you do prior to that time? A. Prior to that time, in the same location as I am now, I was chief of the branch of the land operations.

Q. That was in Phoenix, Arizona?

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A. Correct.

Q. And that was in the office of the Bureau of Indian Affairs? A. Correct.

Q. What jurisdiction does that office have? A. That jurisdiction has responsibility for the work of the bureau in the field of the states of Arizona and Utah, with the exception of Navajo, all of Nevada, part of California, and very small areas extending into Idaho and Oregon.

Q. Would that include the Uintah and Ouray Reservation?

A.. It would.

Q. Now, during the course of your employment in Phoenix, have you become familiar with the provisions of Public Law 671?

A. I have.

Q. Did your work in Phoenix have to do with the implementation of the provisions of that act? A. It did.

Q. As a matter of fact, have you prepared a summary of the steps taken in the implementation of, by the Bureau of Indian Affairs, and the Ute Indian Tribe, of the provisions of Public Law 671 (handing)? You may answer that-- A. Yes, I have.

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Q. I hand you Defendant's Exhibit numbered U-1 and ask you if this document is a summary of those activities. A. It is.

Q. Now, was this prepared by you? A. It was.

Q. Was it prepared in accordance with your knowledge of the circumstances stated therein? A. Yes.

MR. KLEMM: We'll now offer Defendant's Exhibit U-1.

MR. NIELSON: Your Honor, we object to just one line contained in this exhibit, at least if it's offered for the truth of what is contained herein. I note on the last page under 3A it says: "Proclamation by the Secretary, August 24, 1961, effective midnight August 27, 1961, for the mixed-bloods, terminating the trust relationships." And that, of course, is the ultimate question in this case. I object to that particular part of it. Not the rest of it.

THE COURT: Well, that objection is good as far as the conclusion of the effect of the proclamation with respect to termination. As so understood.

MR. KLEMM: We offer it for the other facts that are stated therein.

THE COURT: All right. It may be received.

[927]

(Defendant's Exhibit No. U-1 received in evidence.)

Q. (By Mr. Klemm) Now, are you familiar with the termination proclamation that was published in the Federal Register August 27, 1961? A. I am.

Q. Had the division of assets of the Ute Indian Tribe

been completed at the time the proclamation was published? A. It was.

Q. Now, at the time it was published, did the Indians lose any services which had been provided for them by the Government prior to that date? A. A number of them.

Q. Will you tell us what those services were? A. I have made a list of 20 services. They included preference rights to employment in the Bureau of Indian Affairs, the medical and sanitation benefits that were obtainable under the Public Health Service, opportunity for education at Indian boarding schools, or any schools financed by the Government solely for Indians, tax exemption on real property, seven years after the act was passed, or August 27, 1954.

Q. In an effort to save time, Mr. Hedden, I'm going to show you a document entitled, "Investigative Notes," which has been marked for purposes of identification as

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Defendant's Exhibit U-M and ask you if you would review this and tell us if this represents a fair summary of the rights-- or, the services which were discontinued for the mixed-blood Indians on August 27, 1961. A. I think this is a good representation, yes.

MR. KLEMM: We'll offer this at this time.

MR. NIELSON: I have no objection to it, your Honor, for the limited purposes of showing the services which were discontinued at that time. I think, again, the rights of the Indian are legal questions which the Court will have to rule upon.

THE COURT: I agree. And with that understanding, the exhibit is received.

(Defendant's Exhibit No. U-M received in evidence.)

MR. KLEMM: You may cross-examine.

MR. NIELSON: We have no cross-examination.

THE COURT: Thank you, sir.

MR. KLEMM: I'll now call Mrs. Adelyn H. Logan to the stand, your Honor.

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ADELYN H. LOGAN called as a witness on behalf of the defendants, having been heretofore duly sworn, testified further as follows:

MR. KLEMM: I believe Mrs. Logan has previously testified in this matter.

THE COURT: Yes. She has been sworn.

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DIRECT EXAMINATION BY MR. KLEMM

Q. You are employed by the Bureau of Indian Affairs as a realty officer at Fort Duchesne, Utah? A. Yes.

Q. How long have you been so employed? A. Since August 1960.

Q. Were you employed at Fort Duchesne when the division of tribal assets was made? A. Yes.

Q. Can you tell us what assets were distributed to individual mixed bloods at the time of the division? A. Those assets that were susceptible to equitable and practicable distribution were of a determinable value--that is, cash, land, and so on.

Q. Now, were there any assets that were not of that nature, not of a determinable value? A. Yes. The assets of the Ute Distribution Corporation.

Q. What was done with those assets? A. The Ute Distribution Corporation was formed to act as a holding company for receipt of revenues from those assets that were not susceptible to practicable and equitable distribution, which included the subsurface rights of the Reservation. It also included claims in the United States Claims Commission.

[931]

Q. Now, did any of the mixed bloods have funds in the U.S. Treasury at the time the distribution of the assets took place? A. The mixed blood group as a group had funds in the United States Treasury. The individual members may have had funds in local accounts.

Q. What was done with these funds? A. The funds owned by the--or, the property of the individual members--were paid out, or, in other words, their accounts with the Bureau were cleared by or prior to August 27, 1961.

Q. On that date had the division of the assets been completed? A. The division of assets had been completed by August 27, 1961.

Q. And was your work completed on that project at that

time? A. Yes. The division of assets had been completed.

Q. What provisions were made for minors by the Bureau of Indian Affairs? A. A trust agreement was established between the Secretary of the Interior through the Bureau of Indian Affairs, and a designated trustee, the First Security Bank of Utah.

Q. And what was done with the property that would otherwise have to go to the minors? A. The property of the minors, which included cash, any

[932]

cash in their accounts, plus their shares of stock in the three corporations, the Antelope Sheep Range Corporation, the Rock Creek Cattle Range Corporation, and the Ute Distribution Corporation.

Q. And what was done with those particular assets, the things that represented-- A. The funds of the minors were transferred to the First Security Bank, Salt Lake City Branch. The First Security Bank as transfer agent for the stock of these three corporations held the stock certificates of the-- for the minors.

Q. Now, were there any other persons other than minors included in the trust agreement? A. Yes, there were.

Q. How many? A. Eleven, as I recall.

Q. Would you tell us why these persons were included in that trust agreement? A. They were included in the trust agreement because it was felt that they were in need of assistance in the conduct of their affairs.

Q. Who made that decision? A. That was in the determination of the Secretary of the Interior.

Q. Now, was Charles T. Reed included in that category? A. Yes, he was.

[933]

Q. What was done with the property of those persons and the stock in particular of those persons? A. The same as with the minors. The cash on hand in accounts, in local accounts, plus the stock in the three corporations, was held, was transferred and/or held by the First Security Bank.

Q. Now, did Mr. Charles T. Reed ever offer his stock for sale through the BIA? A. Yes. He came in to offer his shares of stock, or at least some of them, in the Ute Distribution Corporation.

Q. Well, did you post his stock? A. No, we did not, because he was under the trust of the First Security Bank; and in such position, he would not have had in our opinion authority to sell without the approval of the bank as trustee.

Q. When was the trust agreement approved by the Secretary of Interior? A. The trust agreement was executed by the Secretary of the Interior through or by the--or, delegated to the Commissioner of Indian Affairs, and by the First Security Bank as trustee, in July of 1960. I presume that the execution of the agreement by the Secretary of Interior on his behalf constituted approval.

Q. Were there any names of any persons added to the trust agreement after that approval or that signature was placed

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upon the trust agreement? A. There were not to my knowledge.

Q. To your knowledge were there any added after August 27, 1961? A. No.

Q. Are you aware of when the members of the Ute Indian Tribe became citizens of the United States? A. The members of the Ute Indian Tribe, as well as all American Indians, became citizens of the United States in 1924.

Q. Did the determination through Public Law 671 affect the status of these mixed bloods as citizens? A. No, it did not.

Q. As a matter of fact, it specifically states in the Act that it does not affect their status, does it not? A. That's right.

Q. Now, are you familiar with the three corporations that were organized in connection with the distribution of the assets of the Ute Indian Tribe? A. Yes, I am.

Q. Will you tell us the names of those three corporations, please? A. The Antelope Sheep Range Company, the Rock Creek Cattle Range Corporation, and the Ute Distribution Corporation.

Q. Now, were the mixed bloods issued stock in all of these

[935]

corporations? A. They were.

Q. How many shares did they get in the first two corporations? A. Each of the 490 members received one share of stock each in the two land companies.

Q. Now, that stock was subsequently sold to the Ute Indian Tribe, was it not? A. The major portion of it was. I think about 93 per cent of it was purchased by the Ute Indian Tribe.

Q. Now, do you know of the price that they received for that stock? A. The Ute Indian Tribe had indicated that they would pay each member \$550 for his one share of stock in

each of the two companies.

Q. Now, was each member who sold his stock paid individually--

A. They were.

Q. --for that stock? A. They were.

Q. By whom? A. The Ute Indian Tribe.

Q. Was it necessary for each mixed blood who sold stock in those two land corporations to first offer it to the tribe before it was purchased? A. Yes, it was.

Q. And was that done as a block, or was it done on an

[936]

individual basis? A. It was done on an individual basis.

Q. Would you tell us just briefly how that offer was made? A. Each member was required to sign a prescribed form, a form of offer to sell, and upon receipt of this offer in the branch of property management, we later posted them according to the requirements as contained in 25 CFR 243.

Q. Now, that stock, those offers, were accepted by the tribe, were they not? A. They were.

Q. Now, the same basic procedure was followed in connection with the sales of the Ute Distribution Corporation stock, were they not? A. Yes.

Q. Will you tell us what you did with the offers that came in, the offers to sell? I think you said you posted them. A. The offers to sell as they came in from individual members were held for a few days, or perhaps up to about--in other words, we posted them about every thirty days in a block. As many as had come in by a certain date. They were held open for acceptance by the Ute Indian Tribe or any other of the fellow members, owners or members of the Ute Distribution who were offering them. There were no acceptances of these offers by the Ute Indian Tribe nor of their fellow members. Therefore, upon expiration

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of the thirty-day period and this determination that there had been no acceptance, we notified each offeror that he could now sell this stock to whomever he wished within a six-month period, but at no less a price than what he had offered it to the--than what he had offered it for.

Q. Was this procedure followed in each case? A. It was.

Q. Now, when you said you posted them, where did you post them? A. The requirements were that they be posted at the Bureau offices--Bureau office, I should say--and at five local post offices.

Q. Where were they located? A. Roosevelt, Utah; Whiterocks, Myton, Randlett, oh, and Fort Duchesne.

THE COURT: Mrs. Logan, you haven't answered the question, which is where you posted them. He didn't ask you what the requirements were. You haven't got around to answering the question.

THE WITNESS: I thought I answered it.

THE COURT: You said the requirements were to post them at certain places.

THE WITNESS: Well, then, we followed the requirements, and they were posted at the Bureau office and in the post offices.

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MR. NIELSON: I don't think it's clear whether we're talking about all three corporations or just the land corporation.

Q. (By Mr. Klemm) Are you talking about all three or just the land corporations? A. I'm talking in response to your last question. As I recall it, you asked if the same procedure was followed by the Ute Distribution Corporation, and this is what I'm responding to.

Q. All right. As to the two land corporations, the posting was the only thing really that was done, because they were accepted by the tribe; isn't that correct? A. Yes.

Q. Now, did the tribe accept any of the offers made of the Ute Distribution Corporation stock? A. No, they did not.

Q. So in that case, you then sent the additional notification that no offer had been accepted and this document has been included in all of these exhibits that we've talked about have they not? A. Yes.

Q. Have you examined Exhibits 1 through 12, Plaintiffs' Exhibits 1 through 12? A. Yes.

Q. And those notifications were included therein, were they

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not? A. The notifications were.

Q. All right. Did you have occasion, any occasions, when the mixed blood sold his stock to someone other than the tribe? A. Did we have any--

Q. Did they ever come to you and tell you that they had sold their stock to any other members of the tribe--or, to non-members of the tribe? A. They did so, through the furnish-

ing to our office a stock power form indicating who the purchaser was.

Q. Did you furnish a stock power form to be used in connection with this matter? A. We did not.

Q. Did you also require an affidavit from the mixed blood who was selling his stock? A. Yes.

Q. Did you furnish the affidavit form that was used in connection with this procedure? A. We did not.

Q. Now, what did you do with the forms that were submitted to you in this connection? A. The affidavit of the seller, the stock power form, and required fees, together with a certificate by the superintendent, or over the signature of the superintendent, were transmitted

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to the First Security Bank, Salt Lake City Branch.

Q. Now, was this done in every sale that was made prior to August 27, 1964? A. This was done.

Q. Did you do it on any sales subsequent to that time? A. We did not.

Q. Can you tell us how many shares of stock of the Ute Distribution Corporation were sold prior to that date? A. As I recall, we posted about 930 shares of stock for 130 members. Of the some 930 shares, a little over 800 shares were sold; that is, there were stock power forms that were presented to our office.

Q. Now, I think you stated that you had sent a certificate of the superintendent to the bank? A. Yes.

Q. Now, can you tell us how the certificate of the superintendent came to be used in connection with the sale of the Ute Distribution Corporation stock? A. This was an arrangement that was made by or between the superintendent and the trust department of the First Security Bank, in facilitating and expediting the transfer of the, the actual transfer of the stock from the owner to the buyer.

Q. Was it more practical to do it that way? A. This arrangement--a separate certificate--it was decided that a separate certificate would be used, because the

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certificates themselves were in Salt Lake City at the bank; and if the certificate on the back of the stock certificate had been signed, it would have been necessary for those stock certificates to have been sent out by mail, running the risk of loss and this type of thing.

Q. Now, Mrs. Logan, we've referred to Plaintiffs' Exhibits 1 through 12. I'm going to hand you these exhibits one

by one and ask you if you would briefly state the involvement of the Bureau of Indian Affairs in connection with the sale of the stock of the particular mixed blood whose name appears on the exhibit. And if you'd tell us the name, why, we'll know who you're talking about. First of all, we'll hand you Plaintiffs' Exhibit 1-A, and would you please state the dates upon which the various transactions took place? A. This is the certificate of Glen V. Reed. He made an offer to sell five shares of his stock for \$1,750 total on June 1, 1964. It was posted for--on July 9 for acceptance by August 10, 1964. There were no acceptors of that offer. So on August 10, 1964, we notified him, as has been stated, that he could sell to whom-ever he wanted his five shares, but no less than a sum of \$1,750. There were also other requirements that were pointed out that he would have to do in order to convey this stock.

Q. Did you subsequently receive any affidavits in connection with the sale of Mr. Reed's stock?

[942]

A. This appears to be the affidavit. It's rather dim.

Q. What is the date of that affidavit? A. The affidavit is dated August 10, 1964, for sale of the stock to a gentleman by the name of Neal Phelps.

Q. Was the bank notified of the receipt of that affidavit? A. This affidavit, together with the stock power form and the certificate that has been described before, were sent to the First Security Bank, yes.

Q. Was the affidavit itself sent? A. The affidavit itself was not sent, no. In our letter to the bank we stated that an affidavit was on file in our office.

THE COURT: Does that letter appear in the file, or does a copy appear?

Q. (By Mr. Klemm) Does a copy of the letter appear in this particular file? A. Transmitting the certificate to the bank? No, I don't see it here.

MR. KLEMM: I believe that's in another exhibit, your Honor.

A. That's another exhibit, yes.

Q. (By Mr. Klemm) I'll hand you No. 2-A--

* * * *

THE WITNESS: For the record, I might say that the very same procedure was followed in the other eleven cases before us.

Q. (By Mr. Klemm) Mrs. Logan, on each of those occasions that you sent a letter to the bank, did you put the date of the letter on that bank-- A. Oh, yes.

Q. The date that you sent the letter on it? A. Yes. The letters were all dated.

Q. Now, Mrs. Logan, you're also in charge of the issuance of some mineral leases on the Reservation, are you not? A. Yes.

Q. Are there presently any oil shale leases on the Reservation?

[944]

A. There are no oil shale leases on the Reservation. Leases.

Q. At least, that's on Indian lands? A. On Indian lands for which we have responsibility or jurisdiction.

Q. You do not concern yourselves with leases on any non-Indian land? A. We do not.

THE COURT: Is the reason that there are no oil shale leases because no one has sought to negotiate them, or because of some policy of non-leasing, or for some other reason, if you know?

THE WITNESS: There have been--there are no oil shale leases, for the reason that there have been no bona fide applications for oil shale leases. There would be no policy that I'm aware of that would prevent such leases issuing.

Q. (By Mr. Klemm) Has the tribe received any proceeds from oil shale within the last five years? A. None whatsoever in the history of the tribe that I know of.

Q. Has the tribe received any proceeds from coal leases during the last ten years? A. There is one small coal lease which brings in an income of \$200 a year.

[945]

Q. That's income to the tribe? A. To the tribe.

Q. Do you know where that is located? A. It's located in the Tabby Mountain area about 4 South 8 or 9 West. I'm not just sure of the legal description.

Q. Now, is that income to the tribe by reason of royalties? A. No. This is advance rental in lieu of royalties, which would only come about if there was production; and there

is no production.

Q. Do you know how long it's been since there has been production from that coal mine, from that lease? A. Since the tribe's ownership of that lease, there has been no production. I do not know if there was ever any production.

Q. At least, there's none in the recent history? A. No, there is not.

Q. Now, Mrs. Logan, did you ever have occasion to notify the tribe of the offers to sell in these particular instances? A. Of the Ute Distribution Corporation, or all three corporations?

Q. Yes. The Ute Distribution Corporation. A. We notified both the Indian tribe and the members, or the directors of the Ute Distribution Corporation of all offers to sell made by individual members.

Q. How did you do this?

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A. We sent them a mimeographed certified copy of the offer to sell of each individual member.

Q. Did you ever send them a list of the names of mixed bloods who had offered to sell? A. We did not make up a list as such, no.

Q. Did you ever see such a list? A. Not that I recall.

* * * *

Q. (By Mr. Klemm) Mrs. Logan, do you know of any regulations which would permit you to issue any oil shale leases on tribal property? A. To my knowledge, there are no regulations, for the reason that there has not been sufficient--

* * * *

Q. (By Mr. Klemm) To your knowledge do you have authority to issue such leases on tribal lands? A. No doubt, leases could be issued if there was a bona fide application or bona fide interest in the oil shale at the Reservation.

[947]

Q. Would that in any way depend upon the particular area in which the lease was located? A. Not necessarily, in my opinion.

MR. KLEMM: That's all.

CROSS-EXAMINATION BY MR. DUNCAN

Q. Mrs. Logan, did I understand you to testify today that the termination of who was included as an incompetent was made by the Secretary of the Interior? A. Through delegated authority.

Q. In fact, it was made by Superintendent Zollar? A. Through delegated--yes, this would be through delegation of authority.

Q. I think I'm going to read this to you, Mrs. Logan, and ask you if this is what you testified to in your deposition. One further question relating to that one. Did you testify today, did I understand you to mean that the persons included as incompetents expressly on the trust agreement were those who were in general need of assistance? A. I don't believe that I used the word "general." It was determined that they were in need--those who were in need of assistance.

Q. Because they had acted unwisely in the expenditure of their moneys? A. Yes. This was one of the reasons. One of the other

[948]

reasons was age. Senility, for example.

* * * *

Q. (By Mr. Duncan) I'm referring to 81. "Answer. There were eleven adult members who were placed under the trusteeship of the First Security Bank along with the minors because the adults were deemed--it was determined that they were in need of counsel and advice. "Question. You mean they were non compos mentis? "Answer. No, not non compos. They hadn't been declared by the Court by any means, but they were

[949]

incompetent. They had acted unwisely in the expenditure of their moneys and so on. "Who made that determination? "Answer. The Bureau. I suppose in consultation or with the advice of the Social Services Branch. "Question. Is that of the Indian Affairs? "Answer. Yes. "Question. Was this done, this investigation prior to adoption of 671? "Answer. Oh, no. This was done prior to 1961 when they were terminated. "Question. Each mixed blood was investigated by a social worker? "Answer. Yes. "Question. And the report was submitted to somebody, I take it? "Answer. Yes. And there were eleven adults who were determined. "Question. And based on the reports of these social workers, there were eleven people. Was it Zollar who made the decision? "Answer. Well, in agreement with the Social Services, the social workers. "Question. That these eleven people because

of various reasons would be protected further?

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"Answer. Yes." Was that your testimony at the time of your deposition, and is it now? A. That was my testimony at the time of deposition. Is it in conflict with what I stated today?

THE COURT: Well, is that your understanding now as you testified then?

THE WITNESS: Yes. Through a delegation of authority, it came from the Secretary of the Interior down to the superintendent, who in turn--and under the superintendent are these various branches of activity.

Q. (By Mr. Duncan) Now, Mrs. Logan, you testified, did you not, that the reason for transferring the shares of UDC stock without physically handing the certificate to the mixed blood owner was, I believe you said, "to facilitate and expedite transfers." Did I get my notes right? A. Yes, that's what I stated.

* * * *

[975]

PAUL BIGGS called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

THE CLERK: State your full name, please.

THE WITNESS: Paul Biggs.

[976]

* * * *

Q. (By Mr. Klemm) Now, Mr. Biggs, will you tell us where you reside? A. Laramie, Wyoming.

Q. By whom are you employed? A. The U.S. Bureau of Mines, Department of Interior.

Q. In what position? A. I'm head of the Laramie field office of mineral resources.

Q. What are your duties in that connection? A. They're pretty broad. Primarily our job is to evaluate mineral resources, make reserve evaluations, try to look into the future to deter-

mine areas of potential mineral and fuel production in the future, where it will come from, what it will cost, and make a guess as to when it might become feasible economically.

[1980]

Q. Are you a registered professional engineer? A. Yes, a registered professional engineer in the State of Wyoming.

Q. What is your educational background in petroleum engineering? A. I was graduated from the Oklahoma A & M College, now Oklahoma State University, in 1937. I've had approximately 30 years actual field experience in the field of petroleum engineering since that time.

Q. Have you ever had occasion to be engaged in petroleum engineering classes? A. Yes, I'm currently teaching as an instructor in petroleum engineering in the University of Wyoming.

Q. Have you had any occasion to write any papers in the field of petroleum engineering? A. Yes, quite a few.

Q. Now, I presume that you became familiar with reserve estimations for mineral fuels? A. This is part of our business.

Q. And just generally, what does that include? A. Could you rephrase that?

Q. I say, what does that--your familiarity with reserve estimations for mineral fuels--include? A. Well, to first qualify this, although engineering is an exact science, we are certainly not in agreement on the

[1981]

terms "reserves" and "resources." Normally as an engineer, we consider reserves of a mineral commodity which has been blocked or delineated that can be recovered at today's economic costs. Reserves that are inferred or we have a strong suspicion that are present, we consider as resources or inferred reserves.

Q. Now, can you tell us if the Bureau of Mines has published any reserve figures for oil shale in Colorado, Utah, and Wyoming? A. With the exception of some of the area around the Anvil Points Mine west of Rifle, Colorado, which has been closely core drilled, the Bureau has not released reserve estimates on oil shale.

Q. Do you know why they haven't? A. I think that's best expressed by this publication, "Bureau of Mines Report, Investigation 5081," and, "Report of Investigations 6420," which have been previously referred to in testimony here.

Q. Were you here during the testimony of Dr. Christian-sen and Mr. Hamilton? A. Yes, sir.

Q. And are these the documents that they referred to

in connection with their testimony? A. Yes, sir.

[982]

Q. Now, would you identify these publications and give us the page in the publication where such a statement of policy is found? A. Well, the first document that is ordinarily used in considering oil shale resources of Utah is "Report of Investigations 5081 dated October 1954." And on page 7 and 8 in the conclusions of this report, I think the Bureau's position is pretty clearly stated.

Q. Is that stated in one short paragraph? A. Yes, it is.

Q. Why don't you go ahead and read that for the record? A. "Extensive data are presented herein on oil shales of Colorado, and part of these data was used by Belser in estimating reserves of Green River oil shale in Colorado. However, the data presented for the oil shales of Utah and Wyoming are too meager to allow an estimate of oil shale reserves at this time. This is due primarily to the fact that some deposits have not been sampled or analyzed. Also, the analyses presented were derived largely from samples made available to the Bureau from other projects rather than on samples derived specifically from surveys of oil shale deposits. As a result, the available sections are not representative enough to prove the extent and richness of the deposits examined. Essentially, only drill cuttings and channel samples from

[983]

Utah and Wyoming were analyzed. The results of these analyses should be substantiated by the procurement and analyses of cores."

Q. Now, what was the date of that particular document that you've been reading from? A. That was covering oil shale yield analyses for the period 1945 to 1952. The publication was released October 1954. Later, the subsequent publication--

Q. When was the subsequent publication made? A. 1964. It's, "Report of Investigations 6420."

Q. And is that one of these documents that hasn't been used here by the experts for the plaintiffs? A. Yes, it is.

Q. Now, will you read us the paragraph in there that states the present policy of the Bureau of Mines regarding oil shale reserves?

MR. DUNCAN: I'm sorry. What are they reading from now?

A. Report of Investigations 6420, U. S. Bureau of Mines.

Q. (By Mr. Klemm) What page? A. Page 2, under, "Conclusions of the Report." "The principal limitations of the oil yield data are due to the dependence on samples derived from drilling operations. As a consequence, portions of the deposit were not adequately sampled, and the samples used in many

[984]

instances were drill cuttings. These drill cuttings are less reliable than core samples and their oil yields should be regarded as indicative, rather than definite, until substantiated by other means."

Q. Now, is that still the position of the Bureau of Mines in regards to the oil shale deposits found in the Green River area, in the Green River formation of the area in and about the Uintah and Ouray Indian Reservation? A. This would apply to the Green River in the three-state area.

THE COURT: Does it apply to the Green River formation in the three-state area, including Colorado, where I thought you said the report was more definitive?

THE WITNESS: Yes, sir. In speaking of the Green River formation in these three-state areas, it is a huge formation. And in the vicinity of our mine at Anvil Points, we have taken cores on 100-foot center. We have gone out a hundred feet and drilled--

Q. In Colorado? A. Yes. Unfortunately, even in the Piceance Basin we have not had core samples taken on close enough radius to where we feel we could project from one hole to the next and feel that in between these are the same. In the common engineering practice, you have to use what you have available. And normally, we would like to have core holes one mile

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apart. And unfortunately, we did not have these.

THE COURT: You were talking about the policy of the Bureau. I had understood from some of the material that in portions of Colorado they have established reserves--

THE WITNESS: Not the Bureau of Mines.

THE COURT: I see. All right.

THE WITNESS: However, these oil shale reports, the assay reports that are given in these publications have been used by many, many people to come up with various reserve estimates, which, as I stated earlier, we classify as resource. And sometime in the future, when it becomes economically possible to extract the oil.

THE COURT: I see. I see.

Q. (By Mr. Klemm) Have you made copies of those particular paragraphs out of those documents for the convenience of the Court? You can answer yes or no to that. A. Yes. These are copies.

Q. I show you what has been marked Defendant's Exhibits U-P and U-G and ask you if these are the copies of the documents from which you just read, and if the portions that you read are contained therein. A. Yes, sir.

[986]

* * * *

Q. (By Mr. Klemm) Does the Bureau of Mines have any policy regarding the liability of drill hole distances? A. Nothing as a policy, no. This is regulated to the various engineers that are involved in making reserve estimates.

Q. Do you have any personal opinion as to the reliability of drill holes? A. Well, yes. Based on our laboratory tests at Laramie, there has been definite proof that drill cuttings are not particularly representative of the section. This is mostly due to the fact that we have no control over the collection of these cutting.

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* * * *

Q. (By Mr. Klemm) Mr. Biggs, does the distance between the particular drill holes relied upon make any difference as to the reliability of the particular evaluation in the area where those holes are located? A. Yes.

Q. What difference would it make? A. Well, this would be entirely dependent upon the formation of the mineral you're involved with. In the case of oil sands, due to their facing in or out, or the fact that they may be water-bearing in one portion or another, the distance of 2640 feet is usually used as a maximum.

Q. A maximum for reliability? A. For reliability. In the matter of the Green River oil shale, we don't know yet what

the distance would be, because we've never had an area that we can continuously drill out from and determine these factors.

MR. KLEMM: You may cross-examine.

CROSS-EXAMINATION BY MR. DUNCAN

Q. How long have you been head of the petroleum research station at Laramie? A. I'm not head of the petroleum research station. I'm head of the petroleum resource.

Q. That's a division of the--

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A. Yes.

Q. I see. How long have you had that position. A. About 16 years.

Q. You're familiar with K. E. Stanfield, J. W. Smith and L. G. Trudell, are you not? A. Yes.

Q. You've testified concerning 6420, which is published by the Bureau of Mines, 1964? A. That's right.

Q. And you're familiar with the contents? A. Yes.

Q. Do you believe that the statements made therein and the data presented therein as published by the United States Government are true and correct? A. This depends on whether you're asking for an engineering opinion or some other opinion.

Q. I'm asking you if the statements made herein are true. A. In the proper context, yes.

Q. All right. Let's read part of that context. Page 2 that you referred to, the preceding paragraph--and I'm quoting, sir--maybe you'd like to check with me as we go--perhaps this should be offered and received first before I interrogate the witness.

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* * * *

Q. (By Mr. Duncan) On the first page, Mr. Biggs: "One phase of these studies--" That is, collection of data. "--is collection and assay of samples of oil shales encountered in commercial drilling operations to accumulate information on the location, extent, and richness of oil shale deposits. This background information is needed and is published to enable government agencies and the public to better appraise domestic oil shale deposits as a potential source of oil and related products." That's a true statement, isn't it? A. That's certainly correct.

Q. And so you understood when this was published, the purpose of this was in part at least to allow public companies and others to appraise domestic oil? A. That's right.

Q. Now, skipping to the next paragraph: "This report contains oil yield data in a concise form for use by others in appraising oil shales of the Green River formation in the Uintah Basin in Northeastern Utah."

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Did you understand when this was published that the purpose was to supply appraisal data to others interested in the Uintah Basin? A. That's right.

Q. And this sentence, skipping again: "These samples were obtained from forty core holes drilled specifically for evaluating oil shale deposits and from 83 wells drilled for oil and gas." You verified that that is the source of these data? A. Right.

Q. Then, skipping again to the next paragraph on page 2: "Previous estimates by the Federal Geological Society based on part of the oil yield data in this report indicate about 120 billion barrels of oil in place." That is your conclusion, too, from the data published herein, isn't it, sir? A. Yes, sir.

Q. And also on page 2, there are some three dozen majors and others who contributed their cuttings and core hole samples for your analysis? A. That's right.

Q. And the balance of the report is a publication of the results prepared in your office in Laramie? A. That's right.

Q. And, sir, it's fair, is it not, that rather often

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you'll encounter more than 100 million barrels of oil per square mile in the Uintah Basin? A. If you use the word "indicated."

Q. Where, sir, do you on these charts so denominate them? For example, page 133. A. They are not on the charts. They are in the report itself. In the method of determining these reserves.

Q. Yes, sir. Now, referring to what has been offered and received as Plaintiffs' Exhibit 79, this is a 1965 publication of the Bureau of Mines. I presume you're familiar with it? A. That's right.

Q. Was the data relative to oil shale therein prepared under your direction or out of your office? A. No, sir.

* * * *

Q. (By Mr. Duncan) On page 638, this publication of the Bureau of Mines indicates that in the states of Colorado, Utah, and Wyoming: "Oil in place, million 42-gallon barrels, 2 trillion." That is what it says, isn't it, sir? A. It's certainly out of context to use that figure if you don't use the rest of the information regarding the

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table.

Q. We'll offer it all in evidence. But that is what it says, and I take it you have no quarrel with that conclusion? A. Yes. I would have personally.

Q. But not, I take it, in your official capacity? A. Not in my official capacity.

MR. DUNCAN: That's all.

REDIRECT EXAMINATION BY MR. KLEMM

Q. Now, Mr. Biggs, you're an engineer, aren't you? A. Yes, sir.

Q. So there are many things that would affect the question of whether or not that in-place oil or oil shale, or whatever the mineral might be, would have any value. In other words, there would be many things that would affect the value, for engineering purposes of that oil, aren't there? A. Yes, sir.

Q. First of all, you've got to talk about marketability, don't you? A. Yes, sir.

Q. If there is no market, there is no value, is there, basically? A. From an engineering operational standpoint, that is

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correct.

* * * *

Q. (By Mr. Klemm) Would the particular nature of the location of the mineral itself have anything to do with the question about its value? A. You mean geographically or by depth?

Q. How about the depth? A. Obviously it would have.

Q. In what way? A. Only at certain depth are we able to mine economically today; and so far we haven't been able to come up with good in situ recovery for many of the minerals,

including oil shale and petroleum.

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Q. Would the particular concentration of the material have anything to do with its particular value? A. Yes.

Q. In what way? A. Well, your larger and more concentrated deposits would be more valuable.

MR. KLEMM: I think that's all at this time.

RE-CROSS-EXAMINATION BY MR. DUNCAN

Q. I have just one question of Mr. Biggs. Are you familiar with the study made by Mr. Lucas of the AEC, published concerning in situ development of oil shale? A. Yes. I've served as a consultant on his committee for about 12 years.

Q. And do you agree with his conclusions? A. If you accept them in the manner in which they are presented. This is possible, not actual fact.

Q. And his cost of 29 cents per barrel to liquefy shale from atomic methods? A. This is still in the realm of speculation.

MR. DUNCAN: That's all.

MR. KLEMM: That's all we have of this witness, sir. At this time we rest our case,

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MR. BERTOCH: Mr. Cowan. I think Mr. Cowan has already been sworn in this case.

RALPH D. COWAN called as a witness on behalf of the defendants, having been heretofore duly sworn, testified further as follows:

DIRECT EXAMINATION BY MR. BERTOCH

Q. Your name is Ralph D. Cowan? A. Ralph D. Cowan.

Q. You realize you've been sworn and you're still under oath? A. Yes.

Q. Give us again your position with the First Security Bank. A. Vice president and trust officer in charge of the trust department at the Salt Lake City office.

Q. Do you recall, Mr. Cowan, when you testified here before that you were asked by counsel for the plaintiffs regard-

ing the manner in which persons were added to the list of those

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who were beneficiaries of the trust which the bank administered. Will you tell us again how the names were added to it?

* * * *

Q. (By Mr. Bertoch) How were names added to the list of beneficiaries of that trust? A. Through correspondence with the Uintah and Ouray Reservation at Roosevelt, Utah, Fort Duchesne.

Q. How many were there originally on the scheduled list of trustees who were not minors? Other than minors?

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A. I don't recall the exact number.

Q. Do you remember how many there were altogether who were finally put on the list who were not minors? A. About ten or eleven. I don't know the number without checking the list.

Q. Was there one who was added later than the others, an individual who was added some time later than the others? A. Yes.

Q. And who was that? A. That was William Taylor, I believe his name was.

Q. He was added at the request of whom? A. Of the Department of Indian Affairs, I believe it was.

[1000]

* * * *

Q. (By Mr. Bertoch) Mr. Cowan, I show you F-D-1, F-E-1, and F-F-1. Are those part of the files of First Security Bank? A. Those are part of the files pertaining to this trust, yes.

Q. How did they come into your possession, do you know? A. Well, they would have been sent to us by the Bureau of Indian Affairs at the Uintah and Ouray Agency.

Q. Do you know any more about their source than that? A. No.

THE COURT: Now, are you confident that all of those letters or copies were supplied to you from the Bureau agency

at Fort Duchesne?

A. Yes. The one that's material is the letter dated January 20--or January 10, 1961, from Mr. Zollar addressed to our Mr. C. Tab George, in which they enclose the folder for William Taylor, Jr., who had been approved for supervision under the trust. He's the one that--

THE COURT: And these other letters are a part of the folder as so transmitted?

THE WITNESS: They were part of the--transmitted at the same time.

THE COURT: When you say "probably"?

THE WITNESS: So far as I know they were transmitted at the same time. But to me, the material letter is this one

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here, and the others are immaterial really.

THE COURT: Well, unfortunately, I have to satisfy myself as to materiality. I deem that the other two may be material, Mr. Cowan. So help us on the assumption that the others may be material. Are you confident that you received both of the other exhibits from Mr. Zollar's office?

THE WITNESS: Yes.

THE COURT: The objection to F-F-1 is also overruled, and F-F-1 is received.

(Defendants' Exhibit No. F-F-1 received in evidence.)

Q. (By Mr. Bertoch) Then, was Mr. Taylor's name added to that list of beneficiaries as a trustee? A. Yes.

Q. And it was added prior to August of 1961? A. We take it it was the date shown on that letter that I quoted in January of '61, I believe was the date.

Q. January of '61 or January of '60? January '61 is correct, your Honor. Now, was the stock of any minor who was on that list while he was a minor, sold? A. No.

MR. BERTOCH: Your Honor, the trust agreement itself will indicate the Affiliated Ute Indian Trust Agreement, which is in evidence, will indicate that the trust terminated auto-

matically with regard to minors when they became 21 years

[1003]

of age.

Q. (By Mr. Bertoch) Was the stock of any other beneficiary who was on that list while he was still a beneficiary sold? A. No.

Q. Is it true that the stock of Charles T. Reed after the trust was terminated with respect to him sold? A. I am so informed.

Q. I show you now exhibits marked F-S through F-Z, and I will ask you quickly about these. They're already in evidence. Was F-T here a letter which you received, which is purportedly signed by Charles T. Reed? A. Yes.

Q. In substance do you recall, does that letter indicate that he wanted his stock so he could sell it; is that right? A. It so indicates. He wanted to be terminated.

Q. Well, what is the answer to my question? A. Yes.

Q. All right. I show you what's been marked F-U, and did you receive that? No, you didn't receive that. This, your Honor, F-U, is a letter which Mr. Reed testified is a letter which he sent to Louis Haynie, his attorney.

Q. (By Mr. Bertoch) Here, F-X, purports to be an affidavit by Lula Murdock. Was that received by you? A. Yes.

Q. Does that in substance indicate that Lula Murdock thought

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this man was now competent? A. Yes.

Q. And F-Y, is that an affidavit you received from Fausett? A. Yes.

* * * *

Q. (By Mr. Bertoch) What was your frame of mind with regard to Reed's competence after you received these affidavits?

* * * *

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A. Based on the affidavits we received, we came to the conclusion that Reed must have been competent to handle his own affairs.

Q. (By Mr. Bertoch) Did you also take into consideration F-W, which was a letter by Mr. Haynie, Reed's lawyer, to

the bank? A. Yes.

Q. Now, did you have some kind of a committee that administered this trust? A. We have what we call a trust committee, which passes on matters relating to the operation of the trust department other than trust investments.

Q. Did this committee act with respect to Mr. Reed? A. Yes.

Q. Was this group--what action did they take with respect to Mr. Reed? A. After reviewing the affidavits, our committee approved the termination of Mr. Reed as a, one of those who was asked to be--

Q. About when was it you took that action? A. That was on September 17, 1964, that the committee took the action.

Q. Who were the members of that committee? A. Mr. Harold J. Steele, executive vice president of the bank, is chairman of the committee. Mr. Willard L. Eccles,

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a senior vice president, is a member of the committee; I am a member of the committee; Mr. George L. Denton, who happens to be head of our investment department, is a member of the committee; Mr. J. U. Michaels, who was then Mr. Denton's assistant, was a member. He is no longer with the bank. Mr. Thomas C. Cuthbert, vice president and trust officer, really my assistant, was a member. Mr. Kay Young, vice president and trust officer, who was then head of the Ogden office of the trust department, was a member. Mr. Paul Lambert, who is a vice president and trust officer at the Ogden office, is also a member. At this particular meeting Mr. Steele and Mr. Eccles were not present, but they approved the minutes after they had been written.

Q. All of the other members of that committee were present and participated in that decision, is that correct? A. That is correct.

Q. And sometime after that decision was made and his status as a beneficiary in the trust was terminated, he did sell his stock; is that correct? A. After that, the asset--

Q. Well, is that correct? A. Yes. That's correct.

Q. And is it true that the assets that you held for him were distributed to him; is that correct? A. That is correct.

[1007]

MR. BERTOCH: I think that's all, Mr. Cowan.

CROSS-EXAMINATION BY MR. DUNCAN

Q. Mr. Cowan, when you concluded that Charles T. Reed

must be competent to handle his own affairs, this committee so concluded-- A. Yes.

Q. Did you call him in to appear before this committee?
A. He did not appear before the committee, no.

Q. Did you get a report from Mr. Gale, your officer out in the Basin, as to whether he thought Mr. Charles T. Reed was competent? A. Our contacts as far as--

Q. I'm just asking-- A. I would say not that I recall.

Q. And the same question with respect to Mr. Haslem and Mr. Murphy. A. Not that I recall.

Q. Did you obtain the same worker's file on Mr. Charles T. Reed and examine that also at this committee meeting? A. As far as I recollect, we relied primarily on the affidavits.

Q. My question, sir, is did you obtain or attempt to obtain the social worker's file on Mr. Charles T. Reed? A. Not that I recall.

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Q. So it was based solely on his affidavit that you as a committee determined he was competent to handle his own affairs? A. Not his affidavit, no.

Q. The other affidavit that's in evidence? A. The other affidavits. Three of them.

Q. You're talking about the affidavit that was submitted to you by Mr. Reed? A. I don't recall Mr. Reed submitted an affidavit. Did he?

Q. In any event, it's the affidavit in evidence, and that's what you based your decision on? A. Three affidavits.

MR. BERTOCH: All right, sir. Go ahead.

CROSS-EXAMINATION BY MR. KLEMM

Q. Mr. Cowan, from reviewing these documents, I assume that the name of Mr. Taylor was added to the trust agreement prior to August 27, 1961; is that correct? A. Yes.

Q. And there weren't any added after that date, were there? A. No, none added after that date.

MR. KLEMM: That's all.

REDIRECT EXAMINATION BY MR. BERTOCH

[1009]

Q. Mr. Cowan, as far as you know, were there any of

those eleven--there were eleven who were adults who were beneficiaries--who had been declared incompetent by the Court? A. None to our knowledge.

[1010]

* * * *

JOHN B. GALE recalled as a witness on behalf of the defendants, having been heretofore duly sworn, testified further as follows:

DIRECT EXAMINATION BY MR. BERTOCH

Q. Your name is John B. Gale. You've already been sworn and have testified in this action; is that right, Mr. Gale? A. Yes, sir.

Q. You understand now that you're still under oath? A. Yes, sir.

Q. You were at the time of these transactions described in the complaint and now are assistant manager of the First Security Bank in Roosevelt; is that correct? A. Yes, sir.

Q. Mr. Gale, how many shares of this UDC stock did you purchase from white men, as distinguished from the mixed bloods? A. Thirty-nine shares.

Q. Now, you take them one at a time and tell me from whom you purchased them. A. On March 13, 1964, I purchased 10 shares from Mr. Clyde Murray.

Q. And who is Clyde Murray? A. He's a businessman in Roosevelt who had the--has the

[1011]

GMC used truck--or, new truck dealership.

Q. And did he at that time? A. Yes, sir.

Q. How much did you pay for those shares of stock? A. \$400 a share.

Q. Who is the next white man from whom you purchased? A. G. Richard Murray.

Q. And who is he? A. He was a service station operator. He had a used car dealership, and he also had a ranch and run sheep and cattle.

Q. How much did you pay for those shares of stock? A. I purchased various numbers of stock from Mr. Murray. They ranged from \$350 to \$500 a share.

Q. Can you tell me how many you purchased at \$350 at

each price? A. On March 13 of 1964 I purchased 5 shares for \$400 a share. In April, April 23, 1964, I purchased one share for \$500. April 2 I purchased 2 shares for \$500 per share. In May of '64 I purchased 10 shares for \$500 per share. In May also there were 2 more shares purchased for \$500 per share. In August of '64 I purchased 5 shares for \$500 per share. In September, September 4, 1964, I purchased one share for \$350 per share. September 4, 1964, I purchased 3 shares for \$500 per share.

Q. Did you purchase shares from any other white men?

[1012]

A. No, sir.

Q. Now, how many shares did you sell of UDC stock to white men or women? A. Can I just add these. I sold 83 shares.

Q. And will you tell us to whom you sold them, taking them one at a time? A. I sold 15 shares to J. Grant Nielson.

Q. Who is he? A. Mr. Nielson is a contractor in Springville, Utah.

Q. When did you sell those? A. In March of '64.

Q. How much did you get for those a share? A. \$500 a share.

Q. All right. Who else? A. Two shares to F. R. Carpenter.

Q. Who is he? A. He was a gentleman from Arizona.

Q. Who you know what he did? A. No, I don't.

Q. And when was that? A. This was in May of '64.

Q. How much did you get for those shares? A. \$500 a share.

Q. Who else? A. Dr. Donald Mantlyla, who is a dentist in Roosevelt.

Q. How many did you tell to him?

[1013]

A. One share.

Q. How much? A. \$400 a share.

Q. And when? A. Pardon?

Q. When? A. This was in September of 1964.

Q. Is there anyone else to whom you sold who are white men? A. Yes. Dick Bastian, who is the co-owner of the Jet Chevrolet. He purchased 3 shares of stock.

Q. When? A. In February of 1965.

Q. How much did you get for those? A. I placed a value on 2 of them that I traded for a truck at \$350 a share. And one share I sold for cash for \$380.

Q. All right. Anyone else? A. And I sold 3 shares to Bob and Reva Huish, Rexall Drug Store in Roosevelt.

Q. When? A. This was in October of '64.

Q. How much did you get for those? A. \$400 a share.

Q. Any others?

[1014]

A. There was one share sold to a Jasper in Arizona.

Q. Do you know his full name? A. No, I don't.

Q. Do you know what he did? A. No, sir.

Q. All right. How much did you get for that one? A. \$500 a share.

Q. All right. The next one. A. Two shares to Frost from Arizona at \$500 per share, and this was in April of '64.

Q. Do you know what Frost did? A. No, sir.

Q. All right. The next one? A. Three shares to a Tillie Gyllstrom.

Q. Who is she? A. She was a lady in Arizona.

Q. Do you know what she did? A. No, I don't.

Q. How much did you get for those? A. \$530 per share.

Q. When did you sell those? A. In September of '64.

Q. The next one? A. Ten shares to a Mr. Woods, who I don't recall whether he was living in Arizona or back East at the time. He had

[1015]

moved. He wrote to me, and then he moved back East.

Q. What did he do, do you know? A. No, sir, I don't.

Q. All right. When did you sell those? A. In May of 1964.

Q. How much did you get for those? A. \$530 per share.

Q. All right. The next one? A. Five shares to a Mr. Phelps from Arizona for \$530 per share.

Q. When was that? A. This was in August of '64. Two shares to Mr. Phelps, and this was in November of '64, for \$500 per share.

Q. All right. The next one? A. Mr. Stephenson, in December of '64, 5 shares.

Q. Who is he do you know? A. He's an oil man in Salt Lake City.

Q. How much did you get for those? A. \$400 per share.

Q. All right. The next one? A. Five shares were sold to Mr. Dick Bastian.

Q. When? A. In November of 1964.

Q. How much did you get for those? A. \$525. ✓

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Q. The next one? A. In November of '64, there were 2 shares sold to Asael Haslem.

Q. And who is he? A. He's a man who lives in Orem who works, I believe, at Geneva Steel or--

Q. How much did you get for those? A. I sold these to him for \$400 a share.

Q. The next one? A. All of these were sold to Mr. Haslem, this next group.

Q. How many were there? A. There was a total of 26 shares. And 5 of them were sold for four and a quarter per share, 10 for \$450 per share, one for \$425 per share, 2 for-- let's see, 3 for \$490 per share, and 5 for \$500 per share.

Q. Verl Haslem is also assistant manager at the First Security Bank and is a defendant in this case; is that correct?

A. Yes, sir.

Q. Now, when you made these sales where you sold to white persons, at any time when you made those sales were you under any unusual compulsion as a result of circumstances to make the sales, economic or otherwise, to make these sales in the stock? A. No, sir.

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Q. As far as you know, were any of the white men who sold to you under any compulsion as a result of economic or other circumstances to sell to you? A. No, sir.

Q. Now, did you ever have an arrangement with one Nick Murray by which you split profits with him in connection with the sales of JDC stock? A. No, sir.

Q. Now, he testified it was his recollection that you did. Now, can you explain that? A. There much have been a misunderstanding of some sort. I was making a commission on stock that I was handling, transferring, for people in Arizona.

Q. Now, what was the arrangement, if any, that you had with Mr. Murray? A. That if he had stock to sell and I had a buyer, that I would purchase it from him.

Q. And you did purchase some from him, as you've already testified; is that right? A. Yes, sir.

Q. Then you resold some of those; is that correct? A. Yes, sir.

Q. Did you make a profit on some of those that you resold? A. Yes, sir, I did.

Q. How much profit did you make?

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A. \$30 a share.

Q. I think you testified earlier that you purchased some stock at \$500 a share and sold it to Mrs. Vannoy at \$500 a share and you didn't make any profit. Is that true? A. Yes, sir.

Q. Tell me why you did that. A. We had a considerable amount of money on deposit in our bank for Mrs. Vannoy and she had asked if I would purchase stock for her. And since we had this deposit in our bank I deemed it our responsibility to serve her in purchasing stock for her.

Q. Now, she put this deposit in the bank for the purpose, as far as you know, of buying stock; is that correct? A. Yes, sir.

Q. Why is it important to the bank to have that money in the bank? A. Well, we had a considerable amount of money, and as long as it was on deposit in our bank it increased our totals, and as long as our totals were increased then it gave us more money that we had available to loan out to the customers in our area.

Q. About how much money did this involve that was Mrs. Vannoy's? A. Approximately \$23,000.

Q. And it's your testimony then that you felt that this was

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a service that was appropriate to perform for Mrs. Vannoy and helpful to the bank to have that money there, is that correct? A. Yes, sir.

Q. Is there any other reason why you handled these transactions without a profit? A. Well, it's common knowledge to the Court and was--

Q. Just tell us your reasons, now. A. There were several mixed bloods that were selling stock, and trying to aid them in selling their stock and giving them a good fair price for it, I felt it was also a service to the mixed bloods in purchasing their stock, for Mrs. Vannoy, from them.

Q. And the price they got is \$500, is that right? A. Yes, sir.

Q. And you considered at that time that was a good price for it, is that correct? A. Yes, sir.

Q. And is it true that the mixed bloods were also customers in the bank? A. Yes, sir, they were.

Q. Do you know Mr. Leonard Burson, who is a plaintiff

in this action? A. Yes, sir, I do.

Q. Did he come before you at some time in connection with

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the transfer or the sale of some of his stock? A. Yes, sir.

Q. And did he sign any documents while in your presence? A. Yes, sir, he did.

Q. Do you recall what documents he signed? A. He signed stock power and an affidavit to the effect that he had received the sum of money which he had advertised his stock for.

Q. Do you recall now offhand whether he signed one or more stock powers? A. He signed two stock powers and two affidavits.

Q. All right. I show you what has been marked Plaintiffs' Exhibit 8-A, page 7, which is an affidavit, and I'll ask you whether or not Leonard Burson appeared before you and signed that document before you. A. Yes, sir, he did.

Q. And then did you notarize it? A. Yes, sir.

Q. Who else was present at that time, if anybody? A. Mr. LaVere Labrum, also known as Lloyd L.

Q. I show you what's been marked Plaintiffs' Exhibit 8-A, page 8, which is an affidavit, and ask you if that signature is Leonard Burson's signature? A. Yes, sir, it is.

Q. Did he sign that before you and in your presence?

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A. Yes, sir.

Q. Did you notarize it? A. Yes, sir.

Q. Was anyone else present when that was signed? A. Mr. Lloyd LaVere Labrum.

Q. Was this signed on the same occasion as the other affidavit? A. Yes, sir, it was.

Q. I show you what has been marked Plaintiffs' Exhibit F-V-1, which was what we've been calling a stock power, and I ask you if that was signed by Leonard R. Burson in your presence. A. Yes, sir, it was.

Q. On this occasion of the same transaction? A. Yes, sir.

Q. One more. I show you Exhibit F-C-1, another so-called power, and ask you if that was signed by Leonard R. Burson in your presence on this same occasion. A. Yes, sir, it was.

Q. And you notarized it also, is that correct? A. I guaranteed this signature and notarized it on the back.

MR. BERTOCH: I see. That's all.

[1022]

CROSS-EXAMINATION BY MR. DUNCAN

Q. Mr. Gale, do you recall that we took your deposition and asked you if you had any of your canceled checks and records?

A. Yes, sir.

Q. And you told us your wife threw the checks away at the end of each year? A. Yes, sir.

Q. From what did you reconstruct the figures you just gave to the Court? A. I went back to the stock transfer journal and went through with those purchases that I had made.

Q. How were you able to tell what you paid, when you couldn't at the time of your deposition?

MR. BERTOCH: I object to that. That's not in evidence.

THE COURT: Well, you might--I don't know whether he was unable at the time of his deposition to give that information.

Q. (By Mr. Duncan) At the time of your deposition, Mr. Gale, you were unable to tell us what you paid for these purchases and what you sold them for; were you not, sir? A. I think I told you what I paid for the stock.

Q. But now what you resold them for?

[1023]

A. Yes. I think I said that, too.

Q. As a matter of fact, didn't you testify that you didn't have enough money to buy any stock? That all the stock you bought was for somebody else? A. At one time.

Q. At one time. And that all of the sales that you made to Phelps, Carpenter, Gyllstrom and Vannoy, you acted as broker on? A. I acted as their agent.

Q. As a matter of fact, on all of these Arizona people you knew that they were being resold to these people at a several hundred dollar increase? A. Not several hundred dollars.

Q. How much did Mrs. Phelps pay for the stock that you bought for her? A. No, I couldn't exactly recall.

Q. But you were told it was \$700, weren't you? A. Not to my recollection.

Q. Didn't Mr. Matthews tell you it was \$650 to \$750? A. Now, he could have.

Q. In fact, you knew he was making a profit and dis-

cussed it with Mr. Murray and said, "It's too bad we can't get part of that"? A. This could have been.

Q. Yes. And as a matter of fact, when Nick Murray brought

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brought some stock in, if you didn't split a commission, you at least handed him some cash every time when he brought the stock in? A. If he sold it to me, yes.

Q. And you maybe made a check to the mixed blood, but there was some cash difference, that was paid to Nick Murray? A. I don't recall the check being made only on two occasions.

Q. But on each of these transactions you handed some money to Nick Murray, generally \$50? A. No, sir.

Q. You didn't hand him money? A. Yes, sir.

Q. How much was it? A. It was \$500.

Q. Now, you've told us today about a number of transactions when you resold the stock, haven't you? A. Yes, sir.

Q. Do you recall your deposition--I'm referring to page 151--and I think this is proper use of it, your Honor-- "Now, maybe I can clarify it this way. How many times did you, Mr. Gale, participate in a resale wherein you received some compensation? "A. As far as I can recall, there were about four." Did you so testify?

[1025]

A. Yes.

Q. You've testified, Mr. Gale, that Mr. Burson signed these documents before you, haven't you? A. Yes, sir.

Q. You told us at the time, and it is true today, isn't it, that you never kept any record of any document you notarized? You didn't keep a running log? A. No, sir, I didn't.

Q. So you don't know whether that date is right or not? A. The date on it would have been the date he appeared before me.

Q. But you never put a wrong date, but you have no independent records? A. No.

Q. How can you be sure, if it is your testimony, that the document you say was signed by Mr. Burson is the one you notarized? A. Because my signature appears on it.

Q. I see. That is your signature? A. Yes, sir.

Q. But it's your testimony he appeared before you that day? A. Yes, sir.

Q. And that all four documents were signed before you at the same time and place?

[1026]

A. Yes, sir.

Q. Was Mr. Burson sober? A. To my recollection.

Q. You didn't smell booze on him? A. No. Of course, he could have had a drink and--

Q. But you had no evidence of it? A. No, sir.

Q. Now, these transactions you've told us about when you purchased stock, as a matter of fact, you didn't purchase stock in March of 1964 in your own name at any time, did you? A. No, sir.

Q. What you did was the mixed blood would sell his stock and you in turn would direct the bank to have it transferred to one of your people you were reselling to? A. Yes, sir.

Q. So the stock never went through your name? A. No, sir.

* * * *

Q. (By Mr. Duncan) I'll limit that question to the testimony

[1027]

you just gave, these figures you have reconstructed. When you were reselling this stock, the stock was always purchased from these accounts that you held in First Security Bank for purpose of purchasing UDC stock? A. I believe there was only one account that I held.

Q. Vannoy? A. Yes, sir.

Q. How about Carpenter? A. No, sir.

Q. How about Gyllstrom? A. They sent a check out.

Q. And you held the check, and as soon as you had this check, you then went out to buy the stock? A. Yes, sir.

Q. But you didn't buy the stock until you had the check? A. That's correct.

Q. Now, I'm referring to page 69 of your deposition.

"Question: You don't remember what you paid? "Answer: I don't. "Question: And you don't remember what you sold it for? "Answer: No, I don't." Was that your testimony then?

[1028]

* * * *

Q. (By Mr. Duncan) And you recall at that time that

I asked you: "Question: How did Mr. Shaw come to buy the stock? "Answer: He had an agent that was buying for him." And we asked you what you made on those transactions, and you you don't remember what you bought it for and you don't remember what you sold it for. A. Is this on Wopsick? I do remember what I sold it for.

Q. "I don't know what I paid, and I don't know what I sold it for"? A. This could have been.

MR. DUNCAN: I think that's all we have, your Honor.

REDIRECT EXAMINATION BY MR. BERTOCH

Q. There are some today you don't recall what you paid for or what you got for it or what you sold it for; is that true? A. Yes, sir.

THE COURT: I'm not sure I understand that answer. You mean some that you sold to Indians?

THE WITNESS: No, sir. I never sold any to

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Indians.

THE COURT: Well, I thought you did give us exactly what you bought and sold for with reference to all of the stock you bought or sold to white people. Am I mistaken in that understanding?

THE WITNESS: There was one other gentleman that sent his check up for me to clear--make sure the stock was clear to transfer before he relinquished his check to the individual buying stock, and I don't recall what it was.

THE COURT: But you didn't buy that stock, or did you?

THE WITNESS: No. He had made arrangements for the stock, but I handled his money.

THE COURT: And you didn't sell it, but you handled that transaction?

THE WITNESS: Yes, sir.

THE COURT: Well, were there any other cases where you don't remember what you paid white people for stock or what you sold to white people for?

THE WITNESS: No, I think this is the record that I have, sir.

THE COURT: What do you mean when you tell Mr. Bertoch that there were other cases which you wouldn't remember?

THE WITNESS: Well, the one I--

[1030]

MR. BERTOCH: Your Honor, may I interrupt a moment? My question, I don't know whether it was worded or not--

THE COURT: I want to find out from the witness.

MR. BERTOCH: --was directed to purchases he made from Indians. I asked about purchases he made from white people and sales he made to white people. And certainly in my question to him I meant that he may not remember all of the prices he paid for sales--or, purchases he made from Indians. Now, I think he--

THE COURT: Is that correct that you don't remember the prices you paid on purchases from Indians?

THE WITNESS: Yes, sir.

THE COURT: In some cases?

THE WITNESS: In some cases.

THE COURT: And you don't remember the price you sold to white people?

THE WITNESS: I think I have most of the white people that I sold to, sir--

THE COURT: I see.

THE WITNESS: --indicated.

Q. (By Mr. Bertoch) Now, it appears, Mr. Gale, that some of these transactions you've been telling us about, when you purchased, you purchased with other people's money than your own. Now, can you from your recollection and with the aid of notes you've made for yourself, can you tell us of

[1031]

transactions where you used your own money to purchase stock from white men, if there is such an instance? A. No, sir.

Most of this was using the ultimate borrower's money--buyer's money.

Q. For some white person you purchased from another white person; is that right? A. Yes, sir.

Q. And then sold to a second white person, is that correct? A. Yes, sir.

MR. BERTOCH: All right. That's all I have.

* * * *

Q. (By Mr. Bertoch) Mr. Gale, did you buy any stock from Richard Henry Curry? A. No, sir.

Q. He's one of the twelve plaintiffs here? A. Yes.

Q. Did you buy any stock from Glen Reed? A. Yes, sir.

Q. How many shares?

[1032]

A. Five shares.

Q. How much did you pay for it? A. \$350 per share.

Q. Do you recall about when you purchased it? A. The latter part of August, I believe, in '64.

Q. Did you go to him, or did he come to you? A. He came to me.

Q. Where did you talk to him about the sale or the purchase? A. In the lobby of the First Security Bank at Roosevelt.

Q. Do you recall the substance of that conversation now? First let me ask you this. Was anybody else present when you talked to him about the purchase of the stock? A. No, sir.

Q. All right. Will you tell us the substance of the conversation you had with him? A. Mr. Reed resides in Salt Lake City, and he drove out--

Q. Just tell us the substance of the conversation. What I asked you. A. He indicated to me that he wanted to sell his stock. He was bowling and indicated that he needed some money to continue his bowling and asked if I would be interested in buying his shares.

Q. Was there any conversation about his buying it anywhere else?

[1033]

A. I may have told him that there was another man buying in town.

THE COURT: I'm not sure I understand the reference to bowling. Playing a game of bowling?

THE WITNESS: Yes, sir. Bowling with a ball. Ten-pin. He was a bowler, and he was--

THE COURT: A professional bowler?

THE WITNESS: No. He was just in a league, a men's league. I believe he was in a league, and he and his wife were in a league.

THE COURT: Did you get it that he wanted to gamble in connection with bowling?

THE WITNESS: No.

THE COURT: Or just pay the nominal bowling fees?

THE WITNESS: Just to use in his traveling. He traveled about the state from my understanding and did some bowling.

THE COURT: I see.

Q. (By Mr. Bertoch) Do you recall recommending whether or not he go to someone else to sell his stock? A. I may have told him Nick Murray was buying stock, and I believe this is who I told him to go to, if he wished to sell to one other than myself.

Q. But he finally decided to sell to you, is that correct? A. Yes, sir.

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Q. How did you pay him? A. I paid him by cashier's check. I advanced him some at the time after taking an assignment and completed the balance after his stock had been duly advertised and was able to be transferred.

Q. Did you buy any stock from Louise A. Case? A. No, sir.

Q. Did you buy any from Fred Burson? A. No, sir.

Q. Did you buy any from Marguerite Hendricks? A. No, sir.

Q. Did you buy any from Charles T. Reed? A. No, sir.

Q. Did you buy any from Stewart Eugene Reed? A. No, sir.

Q. Did you buy any from Oran F. Curry? A. No, sir.

Q. Did you buy any from Melvin Reed? A. No, sir.

Q. Did you buy any from Letha Wopsock? A. Yes, sir.
Q. How many shares did you buy from her? A. Two shares.
Q. What did you pay for it? A. \$350 per share.
Q. Do you recall the occasion you negotiated with her for

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the purchase of that stock? A. Mrs. Wopsock?

Q. Just say yes or no. A. Yes.

Q. About when did it occur? A. It was in the fall of the year, October, November, of '64.

Q. Where did the conversation take place? A. In the bank.

Q. Did she come to you in the bank? A. Yes, sir.

Q. Had you previously contacted her with respect to her stock? A. No, sir.

Q. All right. Now, tell us, was anybody else present while you had this conversation with her? A. Not that I can recall.

Q. Will you tell us the substance of the conversation?
A. She came in and asked me if I was buying stock, and I said yes. And she said, "How much are you paying?" And I said \$350. She said she had a share to sell. And I asked her if she'd meet me at my home and I'd pay her for the stock at that time, which she subsequently did.

Q. I think you've already testified that on numerous

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occasions, even when you had nothing to do with buying or selling the stock, that you did guarantee signatures; is that correct? A. Yes, sir.

Q. And you notarized numerous affidavits in connection with the sale of stock; is that correct? A. Yes, sir.

Q. Did you sometimes have some conversation with the individuals who were signing the affidavits? A. Yes, sir.

Q. Did you ask them anything as a routine matter? A. Yes, I did.

Q. What did you ask them? A. On the affidavit it stated that they had received a certain amount for their stock, and I asked them if they had, and they all said yes.

* * * * *

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CALVIN E. ANDERSON called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

THE CLERK: Will you state your full name, please?

THE WITNESS: Calvin E. Anderson.

CALVIN E. ANDERSON BY MR. BERTOCH

Q. Where do you reside? A. In Granger, here in Salt Lake County.

Q. What is your business? A. I work for Security Bank.

Q. What is your business address? A. 797 South Main Street.

Q. What is your position with First Security Bank? A. I'm assistant trust officer in the trust department there.

Q. How long have you held that position? A. I've been assistant trust officer for two years.

Q. What were you immediately prior to that?

[1068]

A. An administrative assistant for about six years.

Q. What generally were your duties in that position?

A. I assist in the department there and all transfer work.

Q. What have you had to do, if anything, in connection with the handling of the Ute Distribution Corporation stock?

A. I oversee the transfer work, see that the girl that actually does the transfer work does it properly.

Q. And so any transfers that have been made of Ute Distribution stock have been made under your direction, is that correct? A. Yes.

Q. I show you what have been marked Defendant's Exhibits F-F through F-Q and ask you to tell me what those are. A. These are ledger cards in which we use to show the activity on each individual stockholder. It reflects the certificates issued, the date they were issued, and how many shares, and also the date that these certificates were canceled, and how many shares.

Q. And are these 12 cards the cards of the 12 plaintiffs here in this action? A. Yes, they are.

Q. Are these cards made by you or under your immediate supervision? A. They are made under my supervision.

[1069]

Q. Are they part of the ordinary course of business of the First Security Bank, of your office? A. Yes.

Q. Are these cards or the notations on these cards made at or about the time the transfers were made? A. They're made at the time the transfers are made.

Q. Is the information on there taken from the big stock register, being Exhibit F-A which is in evidence? A. Yes.

* * * *

Q. (By Mr. Bertoch). Mr. Anderson, after August 27, 1964, did any of the mixed-bloods come into your office at the time they wanted to transfer their stock or pick up their stock? A. Yes.

Q. Are there some times when part of their stock was sold and then a new certificate was issued to them? A. Yes. It was necessary to cancel one certificate in order to break it down if they were selling just part of it.

[1070]

Q. Now, did they ever talk to you on those occasions, any of them, with respect to the custody of those stock certificates? A. I would say it was the desire of most of them to have us maintain the certificate in our custody, so that they wouldn't be lost.

MR. DUNCAN: We'll object to the statement of what the desire of the plaintiffs were, and move it be stricken.

THE COURT: I take it you mean--well, do they say anything about that?

THE WITNESS: Maybe I can cover this. They returned the certificates to us for their custody.

THE COURT: Well, the other answer may be stricken.

Q. (By Mr. Bertoch) Did they say anything at the time with respect to it? A. The only thing I recall that they said is that they--

* * * *

Q. (By Mr. Bertoch) Do you remember at this time any specific mixed-bloods who talked to you about this matter?

[1071]

A. I don't recall any specific individual.

Q. Do you remember that there were several of them who did talk to you about this matter? A. Yes.

Q. Can you tell us the substance of what the majority of those told you with respect to that?

* * * *

THE WITNESS: They would deliver the certificate to me or mail it back, asking us to hold it in our files for them.

MR. BERTOCH: Your witness.

CROSS-EXAMINATION BY MR. DUNCAN

Q. Anderson, who is Mills Tooke? He is a stockholder of Ute Distribution Corporation.

Q. What is a "snickle?" A. He refers to this as probably gratuity or perhaps a tip for your services.

Q. I'm referring to Plaintiffs' Exhibit 66, which purports to be a letter from Mr. Tooke signed "Mills," to Calvin, dated December 1, '65. And he says: "I'm in a hurry to get this off so that you can get it transferred on Friday, which

[1072]

I will appreciate it. If you do, you might get another snickle."

Q. What did you get as a result of this letter? A. I don't recall--can I look at it?

Q. Surely. A. I don't recall the particular circumstances of this letter here. I do remember that he was referring to a snickle many times in which nothing was received.

Q. Did you ever receive a "gratuity" from this man? A. Yes.

Q. How much did you receive? A. Five dollars.

Q. And what did you do for the five dollars? A. I performed a service for him, I assume.

Q. That was what? A. Transferring stock for him.

Q. Of course, there was a charge in addition the bank received? A. Yes.

Q. This \$5 went to you personally? A. Right.

Q. Did your superior, Mr. Cowan, know you were receiving these gratuities? A. Yes.

Q. And he didn't object?

[1073]

A. No.

Q. And he knew it was for expediting these transfers?

A. Right.

Q. And you said this happened on a number of occasions?

A. A few occasions.

Q. Now, I refer you, Mr. Anderson, to Exhibit 57. I take it the original of that was on bank letterhead? A. Yes.

Q. And it was signed by you? A. Yes.

Q. Is that about the date it bears? A. Yes.

Q. Now, this letter, as you can see, makes reference to your returning to Mr. Narcho--"Mr. B. A. Narcho, Acting Superintendent, United States Department of the Interior, Bureau of Indian Affairs, Uintah and Ouray Agency, Fort Duchesne, Utah. "Dear Mr. Narcho: We refer to your letter of June 18, 1964, in which you forwarded to us various executed stock powers regarding the transfer of Ute Distribution Corporation stock. We are returning to your office the certificate executed by Brian G. Murray on which the certification of the amount of sale was not filled in." Do you recall the letter now? A. I don't recall the instance, but I'm sure that this

[1074]

bears my name on it. I must have wrote the letter.

Q. In other words, the certificate that came in from Mr. Narcho didn't have how much the mixed-blood had sold it for?

A. Right.

Q. Did you ever see any other such instances? A. Not that I recall.

Q. If you did, you refused to transfer them without having a certificate as to the amount? A. Right.

Q. Did you do anything at all to prevent these documents being sent in without the amount received after this letter? A. As I recall, if they were sent in without anything on them, we would return them for the proper material to be placed on them.

Q. But, at least as of June 29, 1964, you knew that Mr. Brian Murray's had been sent in without being filled in? A. Yes. This was indicated in the letter there.

Q. Referring to Exhibit 75, the original of that, I take it was signed by you and on bank letterhead? A. Yes.

Q. Was it sent about the date it bears? A. Yes.

Q. Now, in this letter you make the statement: "We no longer accept stock powers for the transferring of the

[1075]

stock. We require the stockholders to obtain their certificates

and fill out the assignment on the back of it if they desire to transfer or sell it." Why was that change made, and by whom?

A. We would rather have the stockholder sign the stock certificate, rather than a stock power, if at all possible.

Q. Is there any reason why you identify that change on September 8, 1964? A. No, no particular reason.

Q. Who told you to make the change? A. I don't recall.

Q. Now, the time of August 27, 1964, did you have physical possession of the stock certificates of the UBC? A. Yes.

Q. Did Mr. Verl Haslem obtain from you the stock certificate of Mr. Glen Reed? A. I don't recall.

Q. Could he have? A. Possible.

Q. Did you give Mr. Galé or Haslem anybody else's stock certificates? A. We would mail them out to them to deliver to the stockholders on occasions.

Q. I see. Were you, Mr. Anderson, ever advised of Mr. John Boyden's instruction not to--to discourage transfer?

[1076]

Were you ever alerted to that? A. Not that I recall.

Q. You were never told to attempt to dissuade a mixed-blood from selling stock? A. Not at that particular time in question.

Q. When were you, if ever? A. Well, we've never--I have never been advised by Mr. Boyden personally.

Q. Have you ever been advised by anybody to ask the Indian not to sell his stock? A. I've been advised by the head of our department, Mr. Cowan, if it was ever asked of me, to encourage them not to sell their stock.

Q. If it was asked of you? A. If it was asked of me.

MR. DUNCAN: No further questions.

REDIRECT EXAMINATION BY MR. BERTOCH

Q. Did you ever discourage any of them from selling their stock? A. If they asked me my advice. I don't recall how many times I'd tell them it would possibly be best for them not to sell it.

Q. Did it happen on some occasions? A. A few, perhaps.

[1077]

Q. Did you ever get another "snickle" out of Mr. Tooke other than the \$5? A. He--I don't recall the number of times. I've had two or three.

Q. Now, this September 8, 1964, when you requested that the mixed-bloods sign the stock certificate, of course, that was after the date when they had to post their stock; is that correct? A. Yes.

Q. And it was after the time they had to fill out an affidavit and send it in; is that right? A. Yes.

Q. Did you ever transfer a share of stock prior to August 27, 1964, of UDC stock, for a mixed-blood, without first having in your possession a letter from the Bureau of Indian Affairs and directing you to transfer the stock and telling you that they had an affidavit to the effect that he had received the value for which he had posted the stock? A. No, we never did.

* * * *

MR. BERTOCH: Mr. Haslem.

[1078]

VERL HASLEM called as a witness in his own behalf, being first duly sworn, testified as follows:

THE CLERK: State your full name, please.

THE WITNESS: Verl Haslem.

DIRECT EXAMINATION BY MR. BERTOCH

Q. Where do you reside, Mr. Haslem? A. Star Route, Roosevelt, Utah.

Q. What is your position? A. Assistant manager at the First Security Bank Branch in Roosevelt.

Q. How long have you held that position? A. Approximately nine years.

Q. What are your general duties in connection with that position? A. I am a loan officer and livestock appraiser and real estate appraiser for our branch.

Q. Did you ever purchase any UDC stock from some white persons? A. Yes, sir.

Q. Can you tell me their names? Take them one at a time. A. Yes, sir. On November 24, 1964, I purchased 5 shares from the Jet Chevrolet Company for \$2,000.

Q. Do you recall the individual from whom you purchased

[1079]

it, with whom you dealt? A. The Jet Chevrolet was owned by Dick Bastian and R. Earl Diftman. I don't recall which gentleman I dealt with, but I recall though that he had to get the approval of his partner before he sold to me.

Q. And how much did you pay for those shares? A. I paid \$2,000 for 5 shares, or \$400 per share.

Q. All right. The next person. A. On November 24, 1964, I bought 2 shares from John Gale for \$800.

Q. And the next? A. February 16, 1965, I bought 5 shares from John Gale for \$2,125.

Q. And who else? A. March 16, 1965, from John Chasel, 2 shares at \$900.

Q. Who is John Chasel? A. He is the owner of the Sinclair Oil Products station in Roosevelt. He is the vice distributor of Sinclair.

Q. Who else? A. March 19, 1965, I bought 10 shares from John Gale at \$4,500. March 25, 1965, I bought one share from John Gale at \$425. May 10, 1965, I bought 3 shares from Hollis G. Hollinger for \$1,500.

Q. Who is Hollis G. Hollinger? A. Mr. Hollinger is the owner of the soft drinks bottling

[1080]

works in Roosevelt.

Q. All right. The next one? A. May 14, 1965, I bought 2 shares from John Gale for \$980.

Q. The next one? A. May 17, 1965, I bought one shares from Merve Betts for \$450.

Q. Who is Merve Betts? A. Merve Betts is the auctioneer at the Uinta Sales Barn.

Q. You didn't buy this at an auction? A. No, sir.

Q. Who is the next? A. May 21, 1965, I bought 2 shares from John Gale for \$980. June 1, 1965, I bought one share from John Gale for \$490. Excuse me. I got my lines mixed up. That was June 1, 1965. I bought 5 shares from John Gale for \$2,500. July 20, 1965, I bought 2 shares from Merve Betts for \$950. July 20, 1965, I bought 5 shares from the Roosevelt Equipment Company for \$2,500.

Q. Whom did you deal with there, do you recall? A. It was Lloyd Nelson, an owner and partner to the Roosevelt Equipment Company.

Q. All right. The next one? A. October 18, 1965, I bought 4 shares from Aasel Haslem for \$2,000.

Q. And who is Aasel?

[1081]

A. He is an older brother.

Q. Of yours? A. Yes.

Q. Anyone else? A. No. These are all the white people from whom I purchased stock.

Q. All right. Now, as far as your knowledge goes, did any of these people who sold you appear to be at the time they sold to you under any strained circumstances economically or under any compulsion mechanically or otherwise to sell these shares of stock to you? A. No, sir.

Q. Is it true that all purchases that you made from Indians were made after August 27, 1964? A. Yes, sir. Very definitely.

Q. And that's when there was no longer any need for them to sign affidavits? A. That's correct.

Q. Or to post their stock? A. That's correct.

Q. Now, of the twelve plaintiffs who are here, Mr. Haslem, did you buy stock from any of those? A. Yes, sir.

Q. From whom? A. Joseph Arthur Workman--

[1082]

Q. All right. And who else? A. And Glen Reed.

Q. And now, from Joseph Arthur Workman how many shares of stock did you buy from him? A. One share.

Q. Can you tell me when you purchased that? Well, do you recall, was it in the fall of 1964? A. No, it was in '65.

Q. Was it sometime in 1965? A. Yes. It was sometime later. This is--it was one of the later shares that I purchased.

Q. All right. How much did you pay for that share? A. I know I have it here on record. I have a complete record of everything. If I can see it, I'll give you the date. My list here doesn't list the first names. On October 5, '65--October 4, '65, it indicates I purchased 2 shares. Now--

Q. Well, see if you-- A. I thought it was one share I purchased from Art Workman.

Q. Do you remember of your own independent recollection how much you paid for the shares you bought from him? A. I recall--I thought it was \$350. I'd have to go back through my checks to find out which check went to Arthur. There's more than one Workman on here.

[1083]

Q. It's your best recollection at this time that you paid \$350? A. That is correct.

THE COURT: Per share?

THE WITNESS: Yes, sir.

THE COURT: You say you're uncertain as to whether it was one or two?

THE WITNESS: Well, I thought it was one, until--this record right here on about the time I thought I purchased the one, it indicates it was 2. Your Honor, I thought I purchased one at \$350.

THE COURT: It wouldn't be 2 at \$350?

THE WITNESS: No.

THE COURT: It would be 2 at \$700 probably?

THE WITNESS: Well, these 2 here indicate 2 at \$900.

THE COURT: I see.

Q. (By Mr. Bertoch) Now, do you recall having a conversation with Mr. Workman at the time you purchased that one or two shares? A. Yes, sir.

Q. Where did the conversation take place? A. The conversation was at my desk at the bank.

Q. Was anyone else present at the time? A. Yes, sir. Claude Nebeker was present.

[1084]

Q. Is he an Indian or mixed blood or white? A. He is white.

Q. And did you contact Mr. Workman about the purchase of this stock any time prior to this time, about purchasing this stock from him? A. I may have contacted Mr. Workman prior to the purchase of this stock, but I don't think it was in regards to this particular purchase. I contacted a number of people telling them that if they were interested in selling, I was interested in offering the highest price. So I could have contacted him, yes.

Q. All right. Now, will you tell us the substance of the conversation that you had with him at the time you negotiated the sale and purchase of the stock? A. I particularly remember this time when he, with Claude Nebeker, were at my desk; and the reason I do, I invited him to find some other buyer for this one share of stock, because the reason I invited this was because we were holding the stock as collateral to a note which he and Claude Nebeker had signed jointly, and I didn't want to get involved in any quarrel or have it appear that I was pressuring him. That's why I invited him to go find some other buyer.

Q. All right. Will you tell us then what occurred?
Anything further? A. All I recall, he thought about it a
minute, and he

[1085]

didn't know of any other buyer, and he asked me what I could
offer. I made him the offer, and he chose to accept it.

Q. Did he indicate at that time why he and Mr. Nebeker
were on this note, what that transaction involved? A. Not at
that time he didn't indicate it, but the--

Q. Did he indicate it to you at any other time? A.
Oh, yes, yes.

Q. What did he say with respect to it? A. The note
which they were jointly on which they were liable for was a
note which, the proceeds of which went into a joint gilsonite
project, which Nebeker and Workman were partners in.

Q. I see. Then you purchased also you said some shares
from Glen V. Reed. Is that correct? A. That's correct.

Q. How many did you purchase from him? A. Five shares.

Q. How much did you pay for those? A. \$400 per share,
or \$2,000.

Q. How did you pay him? A. I paid him in cash.

Q. Did you give him--did he give you a receipt for that
cash? A. Yes.

[1086]

Q. I'll show you what's been marked Exhibit F-R and
ask you if that's the receipt he signed. A. Yes, sir, it is.

Q. It bears the date August 30, 1964. Is that the date
that you paid him the money and got the stock? A. Yes, sir.
It was that evening that I paid him the money.

Q. All right. Now, did you prepare this receipt except
for the signature? A. Yes, sir. I wrote that receipt out on
the hood of my car, and he signed it.

Q. And was he there when you wrote it out? A. Yes,
sir, he was.

MR. BERTOCH: This is already in evidence, your Honor.
You may cross-examine.

CROSS-EXAMINATION BY MR. DUNCAN

Q. Mr. Haslem, Exhibit 88-0 is a transfer document,
and on it is written, "Erasure guaranteed, Verl Haslem." Do
you recall that transaction with Stacy Reed? A. I'd have to
see--

Q. Do you recall ever having erased one of these documents, a stock power or an affidavit, and then changing it? A. It seems like I did, yes.

Q. Yes. Did you do it more than once?

[1087]

A. Well, I don't recall. I'd have to see this document to know what exactly you're referring to.

Q. We're trying to find it. Now, did I understand your testimony that you testified you never bought stock before August 27, 1964? A. Not from any mixed blood Indian. I definitely did not.

Q. You did not. All right. Are you saying you didn't buy it for yourself, or you didn't buy it for somebody else? A. All stock that I bought at all times, I bought for myself.

Q. All right, sir. I'm going to show you what's been marked 64-J. This purports to be a letter from yourself as assistant manager, August 10, 1964, to one Robert E. Shaw. I take it the original was signed by you and it was on bank letterhead? A. Yes.

Q. Who is B.P.? That's one of your bank secretaries? A. Yes.

Q. This was typed by you and prepared on bank stationery during bank hours, wasn't it? A. I suppose it was, yes.

Q. Who is Mr. Robert E. Shaw? A. He's a gentleman that lives in Dixon, Illinois.

Q. He came into the bank and asked if you could find some

[1088]

stock for him, didn't he? A. No, he didn't.

Q. How did you meet him? A. I never did--well, yes, I have met him since. I hadn't met him, though, for, oh, probably two years after I sold some stock to him. Do you want me to answer fully now--

Q. I'm going to read you a little bit of this letter and ask you if the statements herein made were true when you made them. "August 10, 1964. I am enclosing for your information a copy of a letter which the directors of the Ute Distribution Corporation delivered to their members." How did you get that? A. I suppose the letter was sent to the bank.

Q. It's a fact that you had from time to time in the bank, information about UDC, didn't you? A. Oh, yes, yes.

Q. "Paragraph 4 is of particular interest to you, as this judgment is still pending"? Do you know what that's about? A. It was one of the pending judgments at that time.

Q. The United States? A. Yes.

Q. Very substantial?

[1089]

A. Well, I don't--I'd have to see which one I was referring to before I could--

Q. "It will be a very good dividend upon its settlement." You said that? A. If that's what I wrote, that's what I said.

Q. Let me ask you about this. "If you have other friends in your locality who are interested in the purchase of this stock, I am satisfied that I can round up some more stock for them." A. Yes.

Q. You were satisfied you could? A. Yes. I was quite confident that I could.

Q. Now, how did you get Glen Reed's stock certificate?

A. As I recall, Glen Reed's stock certificate was one of a number which have been sent back out to the Roosevelt office to secure the signatures of the president and secretary of the Ute Distribution Corporation, and after securing those signatures we were to deliver the certificate to the owner.

Q. And rather than deliver it to the owner, you delivered it to him for signature over to you? A. Well, I don't recall for sure whether he had picked it up prior to that time or whether I delivered it to him at the time I purchased it or not. But either way, he signed the certificate--

[1090]

Q. The certificate is blank as to date, sir. Do you know anything about that? Nor is the certificate signed by the president and secretary. Nor does it bear the seal. Is it possible you took it to him before you ever took it to the Ute Distribution people? A. I don't know if this is the certificate that I purchased or not, Mr. Duncan. This is a 5-share certificate, and he had 10. I've purchased only 5.

Q. I see. Now-- A. But, no, I would not have delivered the certificate to him without the signatures or the seal of the corporation officers.

Q. Now, did you tell him that you were--he wasn't selling to you, that he was selling to Robert E. Shaw? A. No, he wasn't selling to Robert E. Shaw. He was selling to me.

Q. But the transfer went directly to Shaw? A. I chose, after I owned the certificate, to enter Mr. Shaw's name directly on it.

Q. So when he signed it, it was in blank? A. It was

in blank, because I purchased all the face of the certificate.

Q. Did you obtain anyone else's stock certificate that you bought before the August 27, '64, date? A. Not that I recall. I may have purchased one from Earl.

[1091]

Dillman. I know prior to the 27th, Earl asked me a time or two whether or not I was interested. I told him that I was, but I was going to wait for that 27th deadline. And he informed me, I recall, that for a secondary non-mixed blood member, the 27th deadline had no meaning.

Q. That's what Mr. Dillman told you? A. Yes. And he was an attorney. I assumed his word was good.

Q. You knew Mr. Dillman was buying stock, didn't you? A. Oh, yes.

Q. And you knew Mr. Dillman owned a piece of Jet Chevrolet? A. Yes.

Q. Now, when a mixed blood came to you to guarantee a signature--and they did repeatedly? A. Yes.

Q. And you saw that the grantee was Earl Dillman or Jet Chevrolet, did you then take any steps to find out if the Indian was getting a car? In fact, you knew he was getting a car? A. After the 27th now are we talking about?

Q. No, before August 27, '64. A. I think prior to that time, all of those affidavits and the guarantee of consideration which you're referring to, I believe that was handled by John Gale, my associate.

[1092]

Q. I'll show you what is marked 20-B, which purports to be a letter from you dated April 1, 1964. I take it the original was signed by you and on bank letterhead? Is that correct? A. I would presume that's true.

Q. Who is J.H.? Is that a bank steno? A. Yes.

Q. Now, I'm going to read you this sentence and ask you where you got the information. "The only assets which I am acquainted with owned by the deceased are 10 shares of the Ute Distribution Corporation stock, which is held in trust in the First Security trust department, whose address is Main at First South, Salt Lake City, Utah." Do you remember writing that?

A. I don't remember writing it, but if it has my signature--

Q. Now, were you ever advised what this stock being in trust meant and what if any your duties were? A. To some extent I'm advised--

Q. Who advised you? A. This is difficult to answer over several years time. I'm sure at one time or another, Mr. Cowan would probably have advised us that--

the Q. But you are fiduciaries? You were to look out for

[1093]

* * * *

A. Mr. Cowan, head of the trust department, a time or two advised us that we were to always be very careful in the handling of these trust accounts, both minor and adults, up until the 27th. And then after the 27th deadline, of course, we were still to use great care with the minors' accounts. However, I feel that--

Q. (By Mr. Duncan) I just want to know what Mr. Cowan said. That's my question. A. That's the general context of what he said.

Q. Did he ever tell you you weren't supposed to buy stock from them? A. No, he did not.

Q. Did he know you were buying stock?

[1094]

A. Yes, sir.

Q. Never told you not to? A. Why should he?

Q. The answer is no? A. No.

Q. Now, this person you're talking about in this Exhibit 20-B is Mr. John Harms, who was not one of the eleven on the trust agreement; was he? This was a mixed blood all right, but he wasn't one of those named on the sheet? A. You mean the twelve that are--

Q. You know that for a fact, don't you, sir? A. What eleven are you referring to?

Q. To the ones that were named on the trust agreement. Mr. Harms was not one of them? A. As being an incompetent?

Q. Yes. A. I'm not familiar with those names at all.

Q. Now, I'll show you what's been marked Exhibit 24-H dated May 29, '64, and I take it the original was signed by you and it was on bank letterhead and it was prepared on bank stationery during bank hours by a bank secretary? A. Yes, sir.

Q. And in here you are describing a sale, a purchase from Margaret Van Sprouse. She was a mixed blood? A. Yes.

[1095]

Q. And the sale was to Earl Dillman? A. I don't recall who it was to.

Q. Did you receive anything at all for that transaction? A. No, sir.

Q. Now, whenever you guaranteed signatures or notar-

ized affidavits, did you also charge? A. No, sir, we did not charge for guaranteeing.

Q. Did you charge for notarizing affidavits? A. We were--on many occasions we did not charge for notarizing. However, we should have done--or, we could have done, I might say.

Q. The question is, did you ever? A. Oh, yes, I'm sure that--

Q. And the money-- A. Very often I charged for notarizing a signature.

Q. And the money went into First Security Bank? A. Definitely, yes.

Q. And you accounted for it to the Salt Lake City office? A. Well, it goes into our profits at our branch, and eventually it's transferred to the Salt Lake office.

Q. Now, without burdening you with these other letters, each of the letters that's been offered--copies of the letters--where you purportedly signed Verl Haslem, Assistant Manager, Verl Haslem, with Utahna Belnap-- A. Berry.

[1096]

Q. Utahna Berry. B.P. was who? A. Betty Pickup.

Q. These were typed on bank letterheads by bank secretaries during bank hours? A. Yes.

Q. And signed by you? A. Yes, sir.

MR. DUNCAN: No further questions.

REDIRECT EXAMINATION BY MR. BERTOCH

Q. Mr. Haslem, you bought 5 shares from Glen Reed; is that true? A. Yes, sir.

Q. And the record shows that he sold 5 other shares to somebody; but they were not sold to you, is that right? A. No, they were not sold to me.

Q. Do you know whom they were sold to or when they were sold? A. I think they were sold prior to the 27th of August 1964, but I do not know who they were sold to.

Q. If that's true, that's at a time when they weren't having a mixed-blood sign their certificate; is that right? A. That was right prior to that date. All the certificates were held by the trust department in Salt Lake.

Q. All right. Now, I show you what's been marked F-J-1

[1097]

and ask you if you can identify that and tell us what it is.

A. Exhibit F-J-1 is the 5-share certificate of Glen V. Reed.

It's numbered 844.

Q. And it is purported to be signed by Glen V. Reed?

A. Yes, sir.

Q. Do you recall whether or not you saw him sign that?

A. Yes, I did.

Q. And the signature is "guaranteed by First Security"; is that correct? A. That's right.

Q. And what is the date that appears on that certificate? A. September 4, 1964.

THE COURT: Received.

(Defendants' Exhibit No. F-J-1 received in evidence.)

* * *

Findings Of Fact And Conclusions Of Law

This case came on for trial to the court sitting without a jury commencing on Tuesday, October 3, 1967, and continuing through Friday, October 6, 1967, and resumed on Wednesday, October 18, 1967, and concluding on Thursday, October 19, 1967. Adam M. Duncan, Esquire and Parker M. Nielson, Esquire, appeared on behalf of plaintiffs; H. Ralph Klemm, Esquire, Assistant United States Attorney, appeared on behalf of defendant, United States of America; Marvin J. Bertoch, Esquire, of Ray, Quinney and Nebeker, appeared on behalf of defendants, First Security Bank of Utah, N.A., John B. Gale and Verl Haslem. The motion of the Association on American Indian Affairs, Inc., to

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intervene and file brief as amicus curiae was heard and granted on October 18, 1967, Arthur Lazarus, Jr., Esquire appearing as counsel. In accordance with the pre-trial order, this trial was confined to the claims of twelve plaintiffs, referred to in the record as "bellweather" or "designated" plaintiffs and general factual and legal matters affecting their claims in common with the claims of the other plaintiffs herein. Said designated plaintiffs are Glen Reed, Fred Burson, Letha Wopsock, Louise A. Case, Melvin Reed, Marguerite M. Hendricks, Joseph Arthur Workman, Leonard Richard Burson, Oran F. Curry, Stewart Eugene Reed, Richard Henry Curry and Charles T. Reed. Witnesses were sworn and testified, documentary evidence adduced and briefs and memoranda of the parties submitted to the court. Whereupon the court, having duly and fully considered the law and the evidence, and being fully informed and advised in the premises, and good cause appearing therefor, hereby makes and enters the following

Findings Of Fact

Part I

General Findings

1. Each of the plaintiffs was, prior to enactment of Public Law 671, adopted by the 83rd Congress on August 27, 1954 (68 Stat. 868, 25 U.S.C. 677, et seq.), a member of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah.

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2. By reason of the enactment and implementation of Public Law 671, each of the designated plaintiffs was a so-called "mixed-blood" member of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah.

3. The Ute Distribution Corporation was incorporated under the laws of the State of Utah, and its corporate charter issued on or about December 9, 1958; and said Corporation is now and at all times since incorporation has been a corporation validly existing under the laws of the State of Utah. The purpose of the Corporation, as stated in Article IV of the Articles of Incorporation, was to manage jointly with the Tribal Business Committee of the full-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, pursuant to Public Law 671, as amended, a plan for distribution of the assets of the individual mixed-blood members of said Tribe, all unadjudicated or unliquidated claims against the United States, all gas, oil and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution to which the mixed-blood members of the Tribe, as defined and determined by Public Law 671, are now or may hereafter become entitled pursuant to said Public Law 671 or the laws of the United States, and to receive 27.1686 per cent of the net proceeds therefrom and to distribute said proceeds to the stockholders of the Corporation.

The Articles of Incorporation and the contents.

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thereof were approved by the Secretary of the Interior. The Articles of Incorporation provided for 4,900 shares of capital stock of no par value. Each designated plaintiff was issued ten shares of the capital stock of the Corporation on or about the date of incorporation.

4. Article VIII of the Articles of Incorporation of said Ute Distribution Corporation provides in part that no sale of any stock of said Corporation prior to August 27, 1964, shall be valid unless and until offered to members of the Ute Tribe in such form as may be approved by the Secretary of the Interior. Article VIII further provides that if such Offer to Sell is not accepted by any member of the Tribe, the sale thereof to any person not a member of said Tribe may then be made, but only for the same or greater amount and upon the same terms and conditions upon which it was offered to said members, and

provided the Superintendent of the Uintah and Ouray Reservation certifies on the Stock Certificate that said offer to members of said Tribe was made in accordance with law and the regulations of the Secretary of the Interior.

5. Article VIII of the Articles of Incorporation of said Ute Distribution Corporation provides further that all stock certificates issued by the Corporation until August 27, 1964, shall have stamped thereon the following:

"Transfer of this certificate at any time prior to August 27, 1964, to a person not a member of the Ute

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Indian Tribe of the Uintah and Ouray Reservation, Utah, as defined in Public Law 671 - 83rd Congress, approved August 27, 1954, 68 Stat. 868, shall be invalid unless the certificate of the Superintendent of the Uintah and Ouray Reservation is endorsed thereon showing that a prior and proper offer has been made to members of said tribe in accordance with law and the regulations of the Secretary of the Interior."

The said legend was printed on the obverse of all stock certificates of said Corporation issued prior to August 27, 1964, under the legend "Notice of Restriction on Transfer". The stock certificates included no printed form for the endorsement of the Superintendent thereon.

6. All stock certificates of Ute Distribution Corporation bore, on the face of said certificate, in red lettering, the following:

"Warning

"This certificate does not represent stock in an ordinary business corporation. This corporation is organized for the purpose of distributing to the stockholders in the future their respective shares in the proceeds or income from all claims and assets in which the mixed-blood members of the Utah Indian Tribe of the Uintah and Ouray Reservation, Utah, have or will have an interest under the provisions of Public Law 671 - 83rd Congress, approved August 27, 1954, 68 Stat. 868, as amended. The future value of, or return on this stock cannot be determined. This stock certificate should neither be sold nor encumbered by the owner thereof, but should be retained and preserved for the benefit of the stockholder and the stockholder's family."

And: (In black type):

"Countersigned, First Security Bank of Utah, N.A.,
Fourth South Office, Transfer Agent, Salt Lake City, Utah,
By

Authorized Officer"

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7. At all times pertinent to the claims of plaintiffs herein, defendant First Security Bank of Utah, N.A. (a) was a corporation organized under the laws of the United States as a national banking corporation with offices and branches throughout the State of Utah; (b) maintained an office at Roosevelt, Utah; (c) was transfer agent of and for the capital stock of Ute Distribution Corporation; (d) was a signatory to and bound by the terms of a certain business agent agreement dated December 31, 1958 by and between the Bank and Ute Distribution Corporation; (e) was a signatory to and bound by the terms of a certain trust agreement dated July 26, 1960, by and between the Bank and the Secretary of the Interior; (f) held in its Trust Department at its Main Office in Salt Lake City, Utah, physical possession of all issued and outstanding Ute Distribution Corporation stock certificates of the plaintiffs prior to transfer thereof.

8. At all times pertinent to the claims of plaintiffs herein, defendant John B. Gale and defendant Verl Haslem were employed by the First Security Bank at its Roosevelt office, as Assistant Managers, and were notaries public.

9. At all times pertinent to the claims of the plaintiffs herein, Mrs. Adelyn H. Logan (a) was the Realty Officer of the Uintah and Ouray Agency, Bureau of Indian Affairs, Ft. Duchesne, Utah; (b) made her home and

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maintained her residence at Ft. Duchesne, Utah; (c) was acting in her official capacity under the direction of the Superintendent of the Agency with respect to certain matters relating to the transfer of stock of Ute Distribution Corporation, including the receipt and posting of Offers to Sell, preparation of Notification forms that no offer had been received, receiving and examination of affidavits from the original stockholder that he had received in cash the advertised price and from whom, and preparing certificates and letters transmitted to the First Security Bank Trust De-

partment in Salt Lake City, Utah, that such affidavits had been received and were on file at the Agency Office, that the offer to sell had been made in accordance with the law and regulations and the Articles of Incorporation of Ute Distribution Corporation and that there had been no acceptances of said offer.

10. On or about December 31, 1958, First Security Bank and Ute Distribution Corporation entered into a certain business agent agreement. This agreement was at all times subsequent to said date in full force and effect and the Bank was compensated for services rendered thereunder. Said agreement provides in part:

"The corporation has been organized for the purposes set forth in its Articles of Incorporation, a copy of which is attached hereto and made a part hereof. The Corporation requires a stock Transfer Agent; a Depository for its funds; an office in which to keep its records and books of account and where its business may be transacted; and an agency to keep its books, disburse its funds and otherwise assist

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it to carry into effect its corporate purposes. The Corporation has requested the Bank of assist them in these matters and the Bank is ready, able and willing to assist them on the terms and conditions herein set forth.

"1. The Bank will be Stock Transfer Agent for the Corporation. . . .

"3. The Bank will receive and deposit in the Bank all funds paid or delivered to it by the Corporation in accordance with usual bookkeeping and accounting procedures. In this connection, the Bank will receive funds, issue checks against said funds, receive and hold documents, prepare and mail or otherwise deliver statements and reports and generally conduct the business for the corporation.

"4. . . . If, at any time, the Bank is uncertain as to its duties in connection with any matter, it may refrain from any action in connection therewith until said written, certified corporate resolutions and legal advice are received by it. . . ."

11. Pursuant to said business agent agreement, defendant, First Security Bank of Utah, N.A., maintained the stock transfer records of the Ute Distribution Corporation at its First South and Main Office in Salt Lake City, Utah, together

with certain other documents and records relating to Ute Distribution Corporation, and maintained a resident office at Roosevelt, Utah, among other things for the purpose of facilitating and assisting mixed-bloods in the transfer of Ute Distribution Corporation stock.

12. On or about July 26, 1960, pursuant to Public Law 671, the Secretary of the Interior of the United States and First Security Bank of Utah, N.A., entered into a certain agreement denominated "Affiliated Ute Indian Trust Agreement".

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A principal purpose of this Agreement was to protect the mixed-blood beneficiaries of the trust against the improvident dissipation or loss of their assets, including their shares of Ute Distribution Corporation. The Agreement provided that the Bank, as Trustee, could in its sole discretion accept such additional funds or properties granted, conveyed, assigned or made payable to it by the Trustor, by a beneficiary, or by any other person or persons to become a part of the trust property and subject to its terms; and the trustee had the power to terminate the trust as to any beneficiary in its discretion but within the terms and conditions provided in said trust agreement.

13. Antelope Sheep Range Company was incorporated under the laws of the State of Utah on November 18, 1958. The Articles of Incorporation of said Corporation provided for 490 shares of capital stock of no par value. Each mixed-blood member of the Ute Indian Tribe, Uintah and Ouray Reservation was issued one share of said capital stock at or about the date of incorporation.

14. Rock Creek Cattle Range Company was incorporated under the laws of the State of Utah on November 18, 1958. The Articles of Incorporation of said Corporation provided for 490 shares of capital stock of no par value. Each mixed-blood member of the Ute Indian Tribe, Uintah and Ouray Reservation, was issued one share of the said

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capital stock at or about the time of incorporation.

15. The Uintah and Ouray Agency caused to be prepared by the University of Utah, on its behalf, a Social Worker's File concerning the personal history of each mixed-blood. The results of such investigations were submitted to and retained

in the files of said Agency, prior to July 26, 1960, and at all times thereafter.

16. The following forms were prepared and promulgated by the Bureau of Indian Affairs: (a) "Offer to Sell" which was signed by the mixed-blood Ute Indian and delivered to the Uintah and Ouray Agency; (b) "Notification" from the Superintendent that no acceptance of the offer to sell had been received and stating that the stock could now be sold for an amount not less than the amount asked from members of the Tribe and that sale should be on the same terms and conditions offered to the members of the Tribe; (c) "Certificate" that an offer to sell had been made, the amount thereof and that no acceptance had been made, signed by the Superintendent of the Uintah and Ouray Agency.

17. The said "Offer to Sell" provided in part:

"The seller hereby offers to sell certain property described as [blank] for an amount not less than [blank] and upon the following terms and conditions:

"Not less than 10% of the total consideration, made payable to the seller, shall be submitted with the Acceptance of Offer to Sell; within 30 calendar days

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of Acceptance of Offer to Sell, the balance of consideration, made payable to seller, shall be submitted to the Superintendent, Uintah and Ouray Agency, Fort Duchesne, Utah; failure to pay the balance of the consideration within the specified time will constitute a forfeit of the 10% deposit to the seller.

"All deposits are to be made by certified check, bank draft or postal money order made payable to the seller."

18. In no instance was the "Offer to Sell" of any mixed-blood Ute Indian accepted by the Ute Tribe or any member thereof.

19. The regulations adopted by the Secretary of the Interior, pursuant to the provisions of Public Law 671, and as published in 25 Code of Federal Regulations, provide in part (25 C.F.R. 243.8):

"If no acceptance is made by a member of the tribe to purchase such [Ute Distribution Corporation stock] the

Superintendent shall notify the mixed-blood member making such offer that no member of the tribe has accepted the offer to sell and the mixed blood member may then sell such stock at any time within six months thereafter to any person at the same or greater price and upon the same terms and conditions upon which it was offered to the members."

20. The formation of and transfer of assets to Antelope Sheep Range Company and Rock Creek Cattle Range Company was approved by the Secretary of the Interior by reason of the authority granted the Secretary in Section 13 of Public Law 671 (25 U.S.C. 677-1). The formation of Ute Distribution Corporation was acquiesced in by the Secretary of the Interior presumably by reason of authority assumed by the Secretary of the Interior to have been granted under said section. None of the plaintiffs herein was a

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signatory to the Articles of Incorporation of any of the three said corporations.

21. None of the 12 designated plaintiffs was included as a beneficiary under the trust at the time of the sale of their stock in the Ute Distribution Corporation, although Charles T. Reed and Stewart Eugene Reed theretofore had been covered.

22. As far as the sales of the Ute Distribution Corporation stock were concerned, the employees of the Uintah and Ouray Agency, Bureau of Indian Affairs, followed the procedural steps expressly required by the provisions of 25 C.F.R. Section 243.

23. In all transfers of Ute Distribution Corporation stock made prior to August 27, 1964, the plaintiffs delivered an Offer to Sell, made in writing, to the Uintah and Ouray Agency of the Bureau of Indian Affairs at Fort Duchesne, Utah, for the purpose of offering said stock to the Ute Indian Tribe and its members. Each offer to sell set forth the number of shares to be sold and the amount the seller would accept for the stock. In each instance, the Offer to Sell was posted by Agency personnel in at least six public places on the Indian Reservation. None of these Offers to Sell was accepted by the Tribe or a member thereof. After the offers had been posted for a period of 30 days, the Superintendent of the Uintah and Ouray Agency sent a letter of notification to each person who had offered his stock for sale. The notification stated, in each instance, that no acceptance of the Offer to Sell

had been made by the Ute Indian Tribe or a member thereof. It set forth the procedure to be followed under the regulations when the stock was to be sold to another person. Unless otherwise noted in the individual case histories, each of the 12 designated plaintiffs received the letter of notification pertaining to each Offer to Sell his stock.

24. No employee or agent of the United States ever participated in the negotiations of any sale of Ute Distribution Corporation stock by the 12 designated plaintiffs.

25. Prior to the sale of their stock, all of the plaintiffs had received periodic distributions of money or "per capita payments" which had been made through the Ute Distribution Corporation. These payments represented distributions from judgments recovered against the Government and from earnings derived from the minerals on the Reservation. On each instance, the checks were made out directly to the recipient and were accompanied by a Corporation voucher stating the purpose of the payment. It was necessary for each of the 12 designated plaintiffs to endorse each check before cashing. There were eight payments made to them prior to August 26, 1963, the date of the first sale, varying from \$3.00 to \$30.00 per share.

26. It was general knowledge among the mixed-blood members of the Tribe that they were first required to offer to sell their stock to the Tribe before they could

sell it to non-Indians. On several occasions, both in general stockholder meetings, as well as in Board of Directors' meetings, the attorney for the Corporation advised the mixed-bloods who were present that it was difficult to tell the value of the stock and that they should retain possession thereof. The mixed-bloods were generally uninformed and unaware of the value of the mineral interests of the Ute Indian Tribe or how such value affected that of their Ute Distribution Corporation stock.

27. From August 26, 1963 until August 27, 1964, over 800 shares of the 4,900 shares of Ute Distribution Corporation stock had been transferred by the original owner to a non-Indian buyer. On the date of trial, between 45 and 47 per cent of the 4,900 shares of the Ute Distribution Corporation stock had been sold by the original owners,

28. On August 26, 1961, the Secretary of the Interior published the following Termination Proclamation in the Federal Register, No. 165, Volume 26, Page 8042:

"Termination of Federal Supervision Over the Affairs of the Individual Mixed-Blood Members

"Pursuant to the authority contained in Section 23 of the Act of August 27, 1954 (68 Stat. 877, as amended; 25 U.S.C. 677v), it is hereby proclaimed that the Federal restrictions on the property of each individual mixed-blood member of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah having been removed, the Federal trust relationship to such individuals terminated and that effective midnight, August 27, 1961, such individual shall not be entitled to any of the services performed for Indians.

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because of his status as an Indian. All statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to such member over which supervision has been terminated, and the laws of the several States shall apply to such member in the same manner as they apply to other citizens within their jurisdiction.

Stewart L. Udall
Secretary of the Interior

August 24, 1961"

[F.R. Doc. 61-8225; Filed Aug. 25, 1961; 8:49 a.m.]

This proclamation took effect on August 27, 1961. Pursuant thereto and by operation of Public Law 671, the mixed-bloods on August 27, 1961, lost many rights, privileges and services which had theretofore been granted to them by reason of their status as Indians. These included hunting and fishing rights on the Reservation, free public health services, exemption from taxation of land, law and order services, economic and development services, education assistance, employment preferences, bank services, water rights, credit and financing services, real property management services and social services.

29. The division of the assets of the Ute Indian Tribe between the Tribe and the mixed-blood members thereof, and the division of the individual assets to said mixed-bloods, was completed prior to August 27, 1961, aside from realization on individual interests allocated by said division, and the custody of stock certificates issued to accomplish such division.

30. As to most if not all of the transfers of Ute Distribution Corporation stock by plaintiffs, either defendant Gale or defendant Haslem, or some other officer,

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agent or employee of the defendant First Security Bank, endorsed the stock certificate or other instrument of transfer in the capacity of a signature guarantor.

31. It was generally known among the mixed-bloods that said stock should not be sold for less than the amount advertised, and that the stock had substantial value; but the mixed-bloods who sold their stock were generally less well informed, and generally less capable of appreciating and understanding the significance of such information than the white persons with whom they dealt and usually were acting under extreme economic pressure.

Part II

Individual Case Histories Of The 12 Designated Plaintiffs

1. Glen V. Reed, M.B. Number 354, sold 10 shares.

(a) Personal background: He was born April 4, 1919. The Social Workers' File of the Uintah and Ouray Agency reports that he was sent to Los Angeles, California on January 25, 1956 by the Bureau of Indian Affairs for vocational training; that he was a very poor trainee and spent more time in the County jail than he did in training and returned to Utah on June 1, 1956; that it would appear from his record that he has problems in conforming to the demands of society. The file indicates 15 criminal convictions for minor criminal offenses during the period December 29, 1953 through July 1, 1959. Superintendent

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Zollar made no efforts to place Mr. Reed under a trust or to furnish other special protection to him in relation to his stock. Mr. Reed is the father of Glennis Joan Reed Daniels, M.B. No. 355, Judy Gay Reed, M.B. No. 356, Linda Reed, M.B. No. 357, Joeline Reed, M.B. No. 358 and Marjorie Ellen Reed, M.B. No. 359, all of whose assets were administered by First Security Bank under the Affiliated Ute Indian Trust Agreement. Mr. Reed is a high school graduate and a veteran of service in the United States Army, from which he was honorably dis-

charged. He believed the stock represented some per capita payments. He also believed that the stock represented some interests in the reservation.

(b) First Transaction: On or about July 8, 1964, five shares were sold to John B. Gale for \$1,750, paid by a First Security Bank cashier's check, after the shares had been offered for sale at the Uintah and Ouray Agency on June 1, 1964, at \$350 per share and the offering completed on August 10, 1964. A document denominated "stock power" dated August 10, 1964, and a document denominated "affidavit" reciting that he received \$1,750 dated August 10, 1964, were signed by him, but the names of the transferees were not filled in at the time they were signed. The affidavit was notarized and the signature on the stock power guaranteed by John B. Gale. Mr. Gale purchased these shares for Neal H. Phelps and Esther Phelps of Arizona, both of whom were and are unknown to

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Mr. Reed, pursuant to an arrangement whereby they had deposited funds with First Security Bank at Roosevelt, Utah, for the purpose of acquiring Ute Distribution Corporation stock, and Mr. Gale was paid \$530 per share for the stock by the Phelps. Mr. Reed was not advised that the stock was being purchased for the Phelps, or the price which they were paying for it. A certificate dated August 13, 1964, signed by B. Narcho, acting Superintendent, was issued to First Security Bank reciting that the law and regulations relative to the offer had been complied with. In August, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on August 25, 1964, by the bank.

(c) Second Transaction: During the latter part of August, 1964, five shares were sold to Verl Haslem for \$2,000 pursuant to a telephone agreement and formally transferred about August 31, 1964. The shares were actually transferred to Robert E. Shaw of Dixon, Illinois, for an amount which is not of record. Reed signed his name to the endorsement form on the reverse of stock certificate No. 844 on the hood of Haslem's automobile in the nighttime and Reed did not read the

legends on the

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certificate. His signature was guaranteed by Haslem. Reed does not know Shaw and was not advised by Haslem that the stock was being transferred to Shaw or the amount that Shaw was paying for it. The shares were not offered for sale with the Uintah and Ouray Agency. Mr. Reed signed a receipt for \$2,000 on August 30, 1964.

(d) Additional Facts: In the first transaction, Reed discussed the proposed sale with Gale prior to June 1, 1964, when his offer to sell was filed with the Uintah and Ouray Agency at which time he requested \$2,000 but was told that \$1,750 was the most people were paying unless he made a deal with Nick (Richard) Murray for cash and an automobile, whereupon he offered them for sale at the suggested price of \$1,750. He made his deal with Gale, who advanced him money on it, prior to the date when the advertising was completed. In the second sale, he was importuned to sell by Haslem, who contacted Reed in Salt Lake City by telephone. At the request of Haslem, they met in Heber, Wasatch County, to close the transaction. Haslem had Reed's certificate, which Reed had never before seen, with him when they met. Reed requested \$2,500 from Haslem, who told him that \$2,000 was the most he could pay.

2. Fred Larose Burson, M.B. No. 22, sold 10 shares.

(a) Personal Background: He was born April 11, 1935. His Social Workers' File at the Uintah and Ouray Agency showed that he drank to excess, had an extensive record of minor criminal offenses; that the University of

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Utah field representatives had been unable to help him; that the Bureau of Indian Affairs had sent Mr. Burson to Weber College for a course in auto mechanics, which he started in October, 1957, and terminated in November, 1957. The said report concluded: "There seems to be little to be done for Fred." Mr. Burson was, at the time of this trial, serving time in the Salt Lake County Jail for public intoxication. Mr. Burson served in the U. S. Air Force in 1956 and 1957. The Superintendent made no efforts to place Mr. Burson under a trust or to furnish other special protection to him in relation to his stock.

(b) First Transaction: On or about November 6, 1963, six shares were sold to R. Earl Dillman for two 1956 model Ford automobiles and \$1,000 cash. When the documents of transfer were presented to the Uintah and Ouray Agency and First Security Bank, they had been altered so as to actually transfer six shares. He filed an offer to sell six shares with the Uintah and Ouray Agency on August 8, 1963, for \$2,500, but there was no acceptance of the offer. The offering was completed on November 4, 1963. A document denominated "affidavit" reciting that he received \$2,500 was signed by him, dated November 6, 1963, and notarized by Dick Bastian. A second document denominated "stock power" which was prepared on Duchesne County letterhead, was also signed by him, dated November 6, 1963, and

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the signature guaranteed by John B. Gale. A certificate dated October 3, 1963, signed by Superintendent Zollar was issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with, and that the required affidavit had been executed by which Burson declared he had received the advertised value. There is no evidence that the two automobiles purchased were worth less than \$1,500.

Neither Gale, Haslem nor the Bank had anything directly to do with the sales negotiation, nor did they receive anything from the sale.

(c) Second Transaction: In December of 1963, four shares were sold to one Jack Turner, doing business as B.L.I. Trailer Sales, for a trailer house. Four shares were offered for sale on December 4, 1963, for \$2,000 and no acceptance of the offer was received. The offering was completed on February 6, 1964. At the time of sale, he signed a document denominated "stock power" and a document denominated "affidavit" both of which were signed in the presence of John B. Gale at First Security Bank, Roosevelt. Both documents were guaranteed and notarized, respectively, on February 10, 1964, by John B. Gale. A certificate dated February 10, 1964, was signed by Superintendent Zollar and issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with, and that the affidavit had been executed and was

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on file. Neither Gale, Haslem nor the Bank directly received anything from the sale except a fifty cent notary fee paid to

the Bank and they did not participate in the negotiations involved in the sale.

(d) Additional Facts: The documents filed with the Superintendent relative to the first sale, bear the notations of Mrs. Logan to the effect that the word "five" was typed in and "six" written over it in the place where the number of shares was indicated, but she did nothing. Mrs. Logan also knew that Mr. Bastian, the notary on the affidavit in the first sale, was a partner of Mr. Dillman, the transferee, in a used car business. The files of the Indian Agency also indicate that Burson had sold one share of his stock to one Sewell Massey on January 30, 1964. The offering provisions had not yet been completed and the files indicate that the document was never transmitted to the Bank and the transfer was never completed. In relation to the first sale, Burson never actually appeared before John B. Gale to sign any documents.

3. Letha Harris Wopsock, M. B. No. 467, sold 15 shares.

(a) Personal Background: She was born February 19, 1917. She is married to full-blood John Wopsock and has ten children. She is the only mixed blood member of the family. She completed 10 years of school, can read but her understanding of what she reads is limited. Her Social Workers' Report in the files of the Uintah and Ouray

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Agency indicates requests for children's funds; that Mr. Wopsock was considered somewhat improvident; that she incurred many debts in Roosevelt; and that it was obvious that this large family would have difficulty in managing on the income of Mr. Wopsock. The said report concludes: "It is possible that Mrs. Wopsock should be under the supervision of a trustee following termination, but we are not making such a recommendation." At June 15, 1960, Mrs. Wopsock owed First Security Bank, Roosevelt Branch, \$336.60 on a delinquent contract for a range and refrigerator. An appended document entitled "Credit History" and dated July 1959, states that "The Wopsocks are known for going too far in debt, both here and with commercial businesses." The Superintendent made no efforts to place Mrs. Wopsock under a trust or to furnish other special protection to her in relation to her stock. In addition to the 10 shares issued to her, Mrs. Wopsock inherited an additional 5 shares from her mother, Annie Pike Harris.

(b) First Transaction: On or about August 1, 1963, she exchanged five shares of Ute Distribution Corporation Stock and a 1960 GMC pick-up truck to one Clyde Murray for a new 1962 GMC pick-up truck and camper, and still owed him \$54 per month for three years. The stock was offered for sale with the Uintah and Ouray Agency on September 3, 1963, for \$2,500 and no acceptance was received. The offering was completed on November 4, 1963. She signed a document denominated "stock power" and a document denominated

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"Affidavit" reciting that she received \$2,500 which were guaranteed and notarized, respectively, by John B. Gale. A certificate dated November 8, 1963, was signed by Superintendent Zollar and issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with. On November 8, 1963, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on November 14, 1963, by the bank. There is no evidence as to the actual value of the truck exchanged for the stock. Neither Gale, Haslem nor the bank directly received anything from the sale except a fifty cent notary fee.

(c) Second Transaction: On or about February 24, 1964, she transferred two shares to one Bill Hoopes in exchange for satisfaction of a bill at the trading post and some cash, plus some additional credit at the trading post which she considers to have a combined value of \$1,400. Five shares were offered for sale with the Uintah and Ouray Agency on December 16, 1963, for \$3,500 and no acceptance of the offer was received. The offering was completed on February 6, 1964. She signed a document

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denominated "stock power" before John B. Gale on February 24, 1964, and Gale also guaranteed the signature. She also signed a document denominated "affidavit" dated February 18, 1964, to the effect that she received \$1,400 cash. A certificate dated February 26, 1964, was signed by Superintendent Zollar and issued to First Security Bank indicating that the law and

regulations relative to the offer had been complied with. On February 26, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on March 6, 1964, by the bank. Neither Gale, Haslem nor the bank directly received anything from this transaction except a fifty cent notary fee.

(d) Third Transaction: On August 28, 1964, she sold an additional 3 shares to Mr. Hoopes for credit at the Trading Post which she valued at \$1,000. These shares were not offered for sale with the Uintah and Ouray Agency. She signed a document denominated "stock power" which was guaranteed by John B. Gale.

(e) Fourth Transaction: After August 27, 1964, she sold 3 shares to John B. Gale for a sum which she believes

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to be about \$350 cash. She endorsed a document denominated "stock power" which was undated and incomplete as to transferee. The stock was actually resold to Norval R. Johnson and Fern Johnson whose names were filled in as transferees. She does not know the Johnsons, and was not told that her stock was being transferred to them. Her signature on the stock power was guaranteed by Verl Haslem. The shares were never offered for sale at the Uintah and Ouray Agency.

(f) Fifth Transaction: In October, 1964, she sold one share to Mr. John B. Gale and on November 3, 1964, she sold one share to Mr. Gale. She received \$400 and \$350 respectively for each share, which was paid to her in installments as she requested it. She endorsed certificates Nos. 958 and 922 in relation to these transactions, neither of which was offered for sale with the Uintah and Ouray Agency.

(g) Additional Facts: In relation to her sales to John B. Gale, Mrs. Wopsock made the sales because she needed money for Christmas. She asked \$400 per share from Mr. Gale but he told her \$300 was the most he could pay and they finally agreed to a price of \$350. Gale did not tell her in relation to the Fourth transaction that he was acting as agent nor that he was reselling the stock at a higher price, which was the fact. She signed the back of the Ute Distribution Corporation

in relation to the Fifth transaction, but did not read it and was not permitted to read it by Mr. Gale. At the time of the first offer to sell, she went to Mrs. Logan at the Uintah and Ouray Agency, who instructed her in how to offer the stock. Mrs. Logan advised her that the shares were worth in excess of \$700 each. In relation to the first sale, Gale was told that she was getting a truck. In each case Mrs. Wopsock went to the buyer to sell her stock. She was satisfied with her sale to Mr. Hoopes for \$700.

4. Louise Allen Case, M.B. No. 39, sold 10 shares.

(a) Personal Background: She was born January 21, 1916, and has six children. Her Social Workers' File at the Uintah and Ouray Agency indicates that she had received assistance from the Duchesne Department of Public Welfare since 1952, and regularly since 1955; that she was divorced and her husband had a heart condition, making it impossible for him to contribute more than \$20 per month to the support of the children. The report concludes: "Mrs. Case will, no doubt, need continued help and guidance from the Department of Public Welfare. Supervision by a Trustee is not indicated." Superintendent Zollar took no action relative to placing Mrs. Case under a trust or to establish any other special protection for her in relation to her stock. She borrowed money from the tribal credit fund to purchase a home, land and livestock. The case worker stated that she responds well to local adult

educational offerings under the University of Utah program. In 1959 she had a realty mortgage on two city lots, which included buildings and improvements covered by fire insurance in the sum of \$7,000.

(b) First Transaction: On or about November 6, 1963, she sold five shares to one LaVere Labrum for a 1957 Ford automobile and \$1,700. These shares were offered for sale at the Uintah and Ouray Agency on September 9, 1963, for \$2,500, and no acceptance of the offer was received. The offering was completed on November 4, 1963. On November 6, 1963, she signed two sets of documents entitled "stock power" and "affidavit" assigning three shares to Lynn Labrum and Marion Labrum and two shares to Lloyd L. Labrum and Oleta M. Labrum. She believes that these documents were complete on their face when they were signed, at the office of John B. Gale and in his presence, and each of them were afterwards

guaranteed and notarized, respectively, by John B. Gale. The affidavits recite that she received \$1,500 cash from Lynn Labrum and Miriam Labrum and \$1,000 cash from Lloyd L. Labrum and Oleta M. Labrum. At the time these documents were signed, Gale delivered to her a First Security Bank cashier's check in the sum of \$2,500 which she endorsed and returned to Gale who then paid her the sum of \$1,700, and paid Labrum for the automobile. She had discussed the matter of sale with LaVere Labrum prior to the time the shares

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were offered for sale, and Labrum gave her \$50 cash and some gasoline during the period of time that the stock was being offered with the understanding that it would be applied toward the sale. A certificate dated November 8, 1963, signed by Superintendent Zollar was issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with. On November 8, 1963, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on November 14, 1963, by the bank. The car was valued for the purposes of the transaction at \$700 and its actual value is not disclosed by the evidence. Gale received a fifty cent notary public fee.

(c) Second Transaction: She sold three shares to Richard Murray for \$1,320, \$440 per share. On February 24, 1964, she offered five shares for sale with the Uintah and Ouray Agency for \$2,500 and acceptance of the offer was never received. In fact, the offering procedure was not completed until May 7, 1964. Mrs. Case, at the time of sale, signed blank documents denominated "stock power" and "affidavit" which were later filled in by some person whose identity is unknown to her, guaranteed and notarized,

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respectively, by Mr. John B. Gale and dated May 7, 1964. The documents show the transferees to be Tillie Lerma Gullstrom and Laura J. Wood of Mason, Illinois, both of whom were clients of Mr. Gale, and Mrs. Case does not know either of them nor was she advised that they were the purchasers of her stock or the amount which they were paying for it. The affidavits were completed to show that she received \$1,400 and \$700 respectively.

On May 15, 1964, a certificate was signed by Superintendent Zollar and issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with. On May 15, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on May 25, 1964, by the bank. She stated she was satisfied with the deal she made with Murray at the time.

(d) Third Transaction: In June of 1964, she sold two shares to one Dick E. Bastian for \$800. The shares had been offered for sale with the Uintah and Ouray Agency as recited in relation to her second transaction. She executed a document denominated "stock power" and a document denominated "affidavit", reciting that she received

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\$1,000 but, in fact, at the time of the transaction, she received a check for \$800 from Bastian and an additional check for \$200 which was immediately endorsed and returned to Bastian. A certificate dated June 29, 1964, was signed by Superintendent Zollar and issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with. On June 29, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on July 9, 1964, by the bank.

(e) Additional Facts: Although Mrs. Case received automobiles, she was then and now is unable to drive. Mrs. Case was in need of money and on public welfare at the time of the first sale and the second and third sales were made because she was in further need of money, having been taken off welfare by reason of the money which she was supposed to have received on the first sale. When the documents of sale relative to the third sale were received by Mrs. Logan at the Uintah and Ouray Agency, she noted that the purchaser was also the notary on the affidavit, but did not attempt to verify the regularity of the transaction. In relation

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to the first transaction, Mrs. Case attempted to read the documents being signed by her in the presence of Mr. Gale, but he immediately took them away from her and told her that she wouldn't understand them anyway. On the first sale, Gale gave her a cashier's check, which she endorsed and returned to Gale; who then paid Labrum. When Mrs. Case objected to this procedure, Gale said, "Well, you got a car didn't you?" Mrs. Case had already sold stock in the Antelope Sheep Range Company and Rock Creek Cattle Range Company and was familiar with the offering procedure and the requirements of the regulations issued in connection therewith. She knew that she wasn't supposed to sell the stock for less than the offered price.

5. Melvin Reed, M.B. No. 380, sold 10 shares.

(a) Personal Background: Mr. Reed was born on March 27, 1937. His Social Workers' File at the Uintah and Ouray Agency reads in part: "Mr. Reed completed 4 months of vocational training in diesel mechanics in 1958, dropped out and returned to the reservation. He had earlier taken eight months of training in radio and T.V. repair provided by the Bureau in Denver, 1957-1958 and dropped out after numerous encounters with the law and because of financial and scholastic problems. . . He does have a court history with two offenses in Salt Lake City and three offenses committed in Uintah and Duchesne Counties." The report further stated that "This individual is apparently able to manage his own affairs without supervision." An

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appended report reads in part: "Mr. Reed discontinued his training after numerous encounters with the law. Mr. Reed had difficulty with finances while in Denver. Relocation reports reveal that Mr. Reed was a poor student." The Social Workers' File also contains numerous letters setting forth the financial obligations, problems and related matters of Mr. Reed. Superintendent Zollar took no action relative to placing Mr. Reed under a trust or otherwise affording him special protection in respect to his stock. Mr. Reed was incarcerated at the Utah State Penitentiary at the time of trial in this case, having been returned to the penitentiary for parole violations after being initially committed for forgery.

(b) First Transaction: On or about the 11th day of March, 1964, Mr. Reed sold ten shares of stock to one Richard Murray for a 1959 Cadillac which was returned to Mr. Murray about eleven days later, at which time he was given \$1,000. Mr. Reed also received approximately \$480 in cash at the time of the sale, and Mr. Murray applied approximately \$25 to the payment

of a fine against Mr. Murray for drunkenness. All ten shares were offered for sale for the sum of \$6,500 with the Uintah and Ouray Agency on September 27, 1963, and no acceptance of the offer was received. The offering was completed on November 4, 1963. On March 11, 1964, he executed a document denominated "stock power" and a second document

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denominated "affidavit", both of which were blank forms at the time they were signed and both of which were later guaranteed and notarized respectively by John B. Gale so as to indicate that he received the sum of \$6,500 from Mr. Murray. In reply to Gale's question whether Reed had got the money the latter said that "Everything was square". (The blanks were filled in out of Mr. Reed's presence by someone whose identity is unknown to him. Gale and Murray appeared to Reed to be in competition for the purchase of these shares. On March 16, 1964, a certificate was signed and issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with. On March 16, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on March 24, 1964, by the Bank.

(c) Additional Facts: Mr. Reed was released from the Utah State Penitentiary on parole on or about March 10, 1964, and was arrested the same day in Roosevelt, Utah, for public intoxication. On or about March 11, 1964, he was brought before defendant John B. Gale as Justice

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of the Peace, who inquired if he wished to sell his Ute Distribution Corporation stock, to which Mr. Reed replied, "I don't know" and Judge Gale thereafter sentenced him to a fine and he was released after he told Gale he would have to pay the fine from the sale of his stock. Later that same day, Mr. Richard Murray came to Mr. Reed's sister's home where he was sleeping off the effects of intoxication, with a used Cadillac and said that he understood Mr. Reed was interested in buying a Cadillac. They went for a ride in the car, during which time he and three others drank a pint of whiskey, supplied by Mr. Murray, and after the whiskey was consumed, Mr. Reed agreed to purchase the Cadillac. The following day, while Mr. Reed was suffering the

after effects of intoxication, the blank forms were signed before Mr. Gale. About ten days later, while Mr. Reed was again intoxicated and the automobile was being operated by a female companion, it was involved in a traffic accident in Heber City, Utah, and a short time thereafter, Mr. Murray met with Mr. Reed in Heber City, and the Cadillac was returned to him in exchange for the \$1,000 recited above. A short time later, he was returned to the Utah State Prison for a parole violation where he remained to the time of the trial. No evidence was adduced as to the reasonable market value of the Cadillac, and no complaint was made by Reed concerning its quality.

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6. Marguerite Murray Hendricks, M.B. No. 178, sold 10 shares.

(a) Personal Background: She was born May 30, 1903, and has three children. Her social Workers' Report at the Uintah and Ouray Agency reads in part:

"Mrs. Hendricks is said to have been married several times in the past, but we have no record of it. . . During the past year or so she became so disturbed over the planned termination that she directed a series of complaint letters to the Commissioner of Indian Affairs, Assistant Secretary Ernst and to Senators. At the same time, she harrassed Agency officials. . . The Agency Superintendent's letter to the Commissioner pointed out that Mrs. Hendricks reflects the attitude of her family with respect to termination. The entire group felt they should have been in the Full Blood Roll, but the operation of Public Law 671 prohibited them from doing so. The attitude of Mrs. Hendricks and the entire Murray clan on termination makes it impossible for anyone at the Agency to have any semblance of a working relationship with them. Credit History: On 9-29-52, Mrs. Hendricks borrowed \$7,953.75 (CF loan #800) to be spent in this manner: \$6,000.00 for 200 sheep. . . Mrs. Hendricks reported she lost her sheep and did not know what became of them. . . The credit office reported that it is not easy to converse with Mrs. Hendricks. She does not always know what one means and also one does not know what she means."

The report also said:

"In her complaints she stated she was writing on behalf of her fellow members of the Ute Citizens and requested the abolishment of termination, and the removal of Attorney John S. Boyden. She complained that her delinquent irrigation charges

amounted to \$1,353.19, when she did not use this service; and when she sold her 40 acre property this would be deducted from the sale price which she thought was unfair."

The file also contains a letter received by the Indian Agency on July 20, 1960, wherein Mrs. Hendricks states that she is "without a crumb of food in my home. Still I

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am staying and trying to take care of my garden and my chickens. . . I have definitely no support or transportation and I am desperately in need of assistance. . ." and a letter dated October 12, 1959, wherein Mrs. Hendricks says in part, "I do not have means of transportation, neither do I have the price of a phone call. . . I received \$100 from my per capita and I laid it down on my grocery bill and I still have a grocery bill of \$300. . . My rent was due on the 7th and my landlord is threatening to throw me out. . . I have been helping my little grandchildren to live. So I never have a dime for my own benefit and it is getting plenty tough. . ." A letter of January 6, 1959, in the file states that Mrs. Hendricks "needs welfare assistance for the following: food, coal, utilities and rent for the three months." Despite the foregoing, Superintendent Zollar took no action to place Mrs. Hendricks under a trust or to establish other special protection in relation to her stock. Letters written by her appearing in the agency file reveal that she is acquainted with the accepted form of such correspondence, that her penmanship is good and her grammar, spelling, punctuation and vocabulary much above the average for members of her tribe and at least fair as measured by general adult standards.

(b) First Transaction: On November 5, 1963, she sold five shares to Clyde R. Murray for a 1962 Comet automobile. The shares were offered for sale at the

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Uintah and Ouray Agency on September 3, 1963, for \$700 per share, and no acceptance thereof was received. The offering was completed on November 4, 1963. Mrs. Hendricks signed a document denominated "stock power" and a document denominated "affidavit", the signature on the stock power being guaranteed by John B. Gale and the affidavit notarized by Jerry M. Murray. The affidavit recited that she received \$3,500 but she did not receive anything for said stock beyond the Comet automobile. The documents were blank forms at the time she signed them. A certificate dated November 8, 1963, was signed by Superintendent

Zollar and submitted to First Security Bank reciting that the law and regulations relative to the offering had been complied with. On November 8, 1963, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on November 14, 1963, by the bank. Gale handled the notarization of the affidavit and guaranteed the signature but did not participate in the sales transaction except as in these findings otherwise indicated.

(c) Second Transaction: On February 18, 1964, she sold five shares of stock to Richard Murray in exchange

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for some real property in Neola, Utah. The stock was offered for sale at the Uintah and Ouray Agency on January 6, 1964, at a price of \$3,500 and no acceptance of the offer was received. The offering was completed on February 6, 1964. She signed a document denominated "stock power" and a document denominated "affidavit" both of which were blank forms at the time she signed them and both of which were dated February 18, 1964, with signature guaranteed and the affidavit notarized by John B. Gale. The affidavit recited that she received \$3,500, although she received no cash in this transaction. A certificate dated February 18, 1964, was signed by Superintendent Zollar and submitted to First Security Bank reciting that the law and regulations relative to the offering had been complied with. On February 20, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on March 2, 1964, by the bank. Gale did not participate in the sales transaction and he received only a fifty cent notary fee.

(d) Additional Facts: Mrs. Hendricks is hard of hearing and appeared to have considerable difficulty

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in understanding questions on the witness stand. She also appeared to be unable to intelligently understand the transac-

tions in which she sold her stock, or the nature of the consideration which she received for it. The documents presented to Mrs. Logan at the Uintah and Ouray Agency note the family relationship between the purchaser in the first sale and the notary, but she did not attempt to determine the regularity of either transaction.

7. Joseph Arthur Workman, M. B. Number 474, sold 7 shares.

(a) Personal Background: He was born on July 2, 1909. The social worker's file at the Indian Agency states in part: "Joseph A. Workman is a member of the Board of Directors of the Affiliated Ute Citizens. There seems to be little information about him in Bureau files other than Credit and IIM. In 1954, he apparently was living in Richfield and in 1956 he reported his address as Altonah. We do not know the reasons for the moves, nor do we know how Mr. Workman supports himself and wife. . . we presume that he can manage his own affairs in a satisfactory manner." Superintendent Zollar took no action to place Mr. Workman on a trust or otherwise to establish special protection in relation to his stock. Mr. Workman was one of the five members of the Board of Directors of the Affiliated Ute Citizens from 1958 to 1961. He met with

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bank officers and agency officers and tribal attorneys and participated in the formulation of the Transfer Agent Agreement and in the division of the assets of the Ute Indian Tribe between the mixed blood and full blood members thereof. He also assisted in the division of the assets to the individual mixed blood members. At the time of trial he was employed in a store and formerly operated his own business, hiring employees and handling various types of oil and gas products. Mr. Workman frequently heard advice from the tribal attorney and others that the half bloods should retain their stock.

(b) First Transaction: On or about February 10, 1964, he sold six shares of stock to one Robert Huish for \$3,000. The stock was offered for sale with the Uintah and Ouray Agency on November 26, 1963, for \$500 per share, or a total of \$3,000. At the time of sale, he signed a document denominated "Affidavit" before John B. Gale at First Security Bank in Roosevelt, acknowledging receipt of \$3,000, and the document was complete at the time it was signed by him. He also signed a document denominated "stock Power" transferring six shares of stock to Huish, signature being guaranteed by Gale, and this document was also complete at the time it was signed by him. A certificate dated

February 13, 1964, was signed by Superintendent Zollar and submitted to First Security Bank stating that the law and regulations relative to the offering were complied with. On February 14, 1964, the Superintendent of the Uintah and

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Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on February 18, 1964, by the bank. Mr. Workman was satisfied with one of his sales for \$500 per share and still is. He was in a position to know more about the value of the stocks than most of the other half bloods.

(c) Second Transaction: On or about November 27, 1964, he sold one share of stock to Verl Haslem for \$350 by endorsing stock certificate number 712. Said stock certificate indicates that the stock was actually transferred to an Acel Haslem, a member of the Verl Haslem family. This stock was not offered for sale at the Uintah and Ouray Agency, and the sale was negotiated at First Security Bank in Roosevelt.

(d) Additional Facts: Mr. Workman was formerly a member of the Board of Directors of the Affiliated Ute Citizens, a group which represented the mixed blood group, and went out of existence at or about August 27, 1961. He knew and understood that his Ute Distribution Corporation stock represented an interest in the tribal minerals but on the occasion of each of his two sales he was under

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pressure to make payments on outstanding loans at First Security Bank at Roosevelt, Utah, and would not have sold his stock had he not been under pressure from said creditor. Mr. Workman testified that the Ute Distribution Corporation took over from the Affiliated Ute Citizens on August 27, 1961. He knew the purpose and had more than the ordinary knowledge of the possibilities of the corporation, as well as what his stock represented. The distribution of the stock was part of the distribution of assets of the tribe to the individual members. He attended numerous meetings prior to termination where termination was discussed. Thirty-five to seventy-five mixed-bloods would attend these meetings. Occasionally they discussed the potential value of the stock and Mr. John Boyden, counsel for

the council of the mixed-bloods, often advised the people in attendance to retain their stock.

8. Leonard Richard Burson, M.B. No. 24, sold ten shares.

(a) Personal Background: He was born September 24, 1920, and a Social Workers' Report at the Uintah and Ouray Agency states in part: "As can be ascertained from his long criminal record, Mr. Burson drinks to excess." Attached to this report is a summary indicating that Mr. Burson had 15 convictions for minor criminal offenses during the period of July 21, 1953, through July 1, 1959. He also has four minor children who are full bloods. Burson had about twelve years of schooling but did not graduate

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from high school. He is a sawmill worker. Superintendent Zol-lar took no action relative to placing Mr. Burson under a formal trust or to determine if he was in need of assistance or otherwise protect him in relation to his stock.

(b) First Transaction: On or about November 6, 1963, he sold ten shares of stock to LaVere Labrum for a 1960 Ford automobile and \$3,200 in cash. His stock was offered for sale with the Uintah and Ouray Agency on August 29, 1963, at a price of \$5,000 and no acceptance of the offer was received. The offering was completed November 4, 1963. He executed two documents denominated "Stock Power" at First Security Bank before John B. Gale on November 6, 1963, which indicate that five shares were transferred to Lloyd L. Labrum and Olete M. Labrum, and five shares transferred to Lynn Labrum and Marion Labrum. He was accompanied to the offices of Mr. Gale at the Bank by Lloyd Labrum and Lynn Labrum, who are partners in L & L Motor Company, Roosevelt, Utah. Two documents denominated "Affidavit" of the same date reciting that he received the full advertised price are also in the file, and the court finds from a preponderance of the evidence that he signed them despite his present belief that he did not. On November 8, 1963, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which

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he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on November 14, 1963, by the bank. Mr. Burson was satisfied with this sale at the time it was made. There is no

express evidence to show the value of the car but he believed its value was sufficient with the cash received to make up the \$5,000 or the equivalent for his stock. Gale did not participate in the sales negotiations and received nothing from the transaction except a notary fee.

9. Oran F. Curry, M.B. No. 59, sold ten shares.

(a) Personal Background: His Social Worker's File at the Uintah and Ouray Agency reads in part: "At this point the family owed \$2,322.23 on a Tribal loan. Three other loans since 1952 have been paid in full. According to the credit report 'Mr. and Mrs. Curry have quite an extensive credit record, much of it is prior to May 1952. They have required and received a great deal of service by the various branches of the Agency.'" After receiving the foregoing information, Superintendent Zollar took no steps to place Mr. Curry under a formal trust or determine if he was in need of assistance or otherwise protect him in relation to his stock.

(b) First Transaction: On or about February 14, 1964, he sold one share to one John Chasel and on or about

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February 19, 1964, he sold one share to one Orin Swain, both of which were sold for approximately \$85, and automobile repairs valued at \$400 at Mr. Swain's and Mr. Chasel's business establishments. An offer to sell covering five shares was filed with the Indian Agency on September 9, 1963, for \$3,500 and no acceptance thereof was received. The offering was completed on November 4, 1963. On or about February 19, 1964, he executed documents before John Gale which were denominated "stock power" and "affidavit", which were notarized and guaranteed by John B. Gale, respectively, which were blank forms at the time he signed them. He made no objection to signing a blank affidavit. The affidavits were later completed so as to recite that he received \$700 cash. A certificate was signed by Superintendent Zollar on February 26, 1964, and submitted to First Security Bank reciting that the law and regulations relative to offering had been complied with. On February 26, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on March 6, 1964, by the bank. Gale did not participate

in the sales negotiations and received nothing but a fifty

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cent notary fee.

(c) Second Transaction: On or about March 24, 1964, he sold three shares to one Clyde R. Murray for approximately \$1,800 cash. This sale was also covered by the offer to sell referred to in relation to the first transaction. On the date of sale, he executed documents denominated "stock power" and "affidavit" before John Gale, reciting that he received \$2,100, which were respectively guaranteed and notarized by Mr. Gale, but which were incomplete forms at the time they were signed by him. A certificate dated March 31, 1964, was signed by Superintendent Zollar and submitted to First Security Bank reciting that the law and regulations relative to the offering had been complied with. On February 26, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on April 2, 1964, by the bank. Except as in these findings indicated, Gale did not participate in the sales negotiations and received nothing but a fifty cent notary fee.

(d) Third Transaction: On or about August 18, 1964, he sold two shares of stock to one Dick Bastian for \$300 per share cash. On July 7, 1964, he offered five

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shares of stock for sale at the price of \$3,000 and no acceptance thereof was received. The offering was complete on August 10, 1964. On the date of sale, he executed a document denominated "stock power", signature of which was guaranteed by John B. Gale, and a document denominated "affidavit" which was an incomplete form when he signed it, reciting that he received \$1,200 which was notarized by Irene K. Ruppel. On August 26, 1964, a certificate was signed by Superintendent Zollar and submitted to First Security Bank reciting that the law and regulations relative to the offering had been complied with. On August 31, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to

the members of the tribe had been received for such stock. The stock was transferred to the new owner on September 10, 1964, by the bank. Except as in these findings indicated Gale did not participate in the sales negotiations.

(e) Fourth Transaction: On or about October 23, 1964, he executed in blank the obverse of Ute Distribution Corporation Stock Certificate Number 881 and thereby transferred one share to one Dick Bastian. His signature was guaranteed by Verl Haslem and he received \$300 per share in cash. Except as in these findings indicated

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Haslem made no representations, did not participate in the sales negotiations and received nothing from the transaction.

(f) Fifth Transaction: On or about December 4, 1964, he executed in blank the obverse of Ute Distribution Corporation Stock Certificate Number 972 and thereby transferred one share of stock to Dick Bastian. He received \$300 therefor and his signature was guaranteed by Verl Haslem. Except as in these findings indicated Haslem made no representations, did not participate in the sales negotiations and received nothing from the transaction.

(g) Sixth Transaction: On or about January 4, 1965, he executed in blank the obverse of Ute Distribution Corporation Stock Certificate Number 1023 and thereby transferred one share to Dick Bastian for \$300. His signature was guaranteed by Verl Haslem. Except as in these findings indicated Haslem made no representations, did not participate in the sales negotiations and received nothing from the transaction.

(h) Additional Facts: Although Mr. Curry had a number of transactions involving his Ute Distribution Corporation stock, he never actually had physical possession of the stock certificates. When he signed certificates he didn't know whether he read the warning thereon. He formerly had been prominent in tribal affairs. He knew the Ute Distribution Corporation owned minerals, lands and

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possibly future claim money that he had coming from the government. He understood his stock represented some share of the corporate property in a general way. He was in financial need when he sold his stock. He had received and sold stock in the two land corporations and was acquainted in a general way with the offering and posting requirements and with Public Law 617.

10. Stewart Eugene Reed, M.B. Number 361, sold 10 shares.

(a) Personal Background: He was born July 21, 1940, and was placed under the Affiliated Ute Indian Trust Agreement by reason of the fact that he was a minor on August 27, 1961. He was released from the trust and the trust terminated with respect to him when he reached twenty-one years of age, which was prior to the time he sold his stock. He attended high school until his junior year, after which he attended junior college in Carbon County for two semesters. He studied mechanics and body and fender work.

(b) First Transaction: On or about October, 1963, he sold five shares to one Clyde R. Murray for an automobile and \$400. Five shares of the stock were offered for sale at the Uintah and Ouray Agency on September 4, 1963, at a price of \$2,500, and no acceptance thereof was received. The offering was completed on November 4, 1963. On the date of sale, he executed two documents denominated "stock power" and "affidavit", respectively, which were guaranteed and notarized by John B. Gale. The Affidavit

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recited that he received \$2,500. A certificate dated November 8, 1963, was signed by Superintendent Zollar and submitted to First Security Bank reciting that the law and regulations relative to the offering had been complied with. On November 8, 1963, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on November 14, 1963, by the bank. Except in these findings otherwise indicated, Gale and Haslem did not participate in the sales negotiations and received nothing from the transaction. The reasonable value of the automobile is not shown by the evidence except that Reed who had had auto mechanics training believed the car and cash approximated \$2300.

(c) Second Transaction: On or about February 21, 1964, he sold five shares to one Wallace A. Davis for an automobile and \$700 in cash. Five shares were offered for sale at the Uintah and Ouray Agency on November 29, 1964, at a price of \$2,500, and no acceptance thereof was received. The offering was completed on February 6, 1964. On the date

of sale, he executed two instruments denominated "stock power" and "affidavit" which were guaranteed and notarized by Verl Haslem and both of which were

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complete at the time they were signed by him. The affidavit recited that he had received \$2,500. A certificate dated February 26, 1964, was signed by Superintendent Zollar and submitted to First Security Bank reciting that the law and regulations relative to the offer had been complied with. On February 26, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on March 6, 1964, by the bank. Except as in these findings indicated Haslem did not participate in the sales negotiations and received nothing from the sale. There is no evidence that the car and cash received was of a value substantially less than \$2,500.

(d) Additional Facts: In relation to the second sale, Mr. Davis wrote a check on the account of Davis Chevrolet Company at First Security Bank of Roosevelt, Utah, dated February 24, 1964, and payable to Stewart E. Reed in the sum of \$2,500. Said check was endorsed by Mr. Reed and deposited to the account of Davis Chevrolet on which it was written. The transaction as represented by the check was sham. In relation to the first transaction, Murray went to First Security Bank in Roosevelt and

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obtained a check from Mr. Gale payable to Mr. Reed in the amount of \$2,500, which was immediately endorsed and returned to Mr. Gale.

11. Richard H. Curry, Sr., M.B. Number 66, sold 10 shares.

(a) Personal Background: Mr. Curry was born January 18, 1927. He has six children. His Social Worker's File at the Uintah and Ouray Agency states in part: "We know that Mr. Curry has been rather irresponsible and has been a heavy drinker. . . . Nothing is known about his present employment. Mr. Curry has no cash assets on hand and is not expected to acquire any through sale of property since he has none assigned to him. We know from

experience that we can expect no support from Mr. Curry for his children. It was thought that he should be placed under the supervision of the Trustee to conserve any assets which he might acquire for the benefit of the children. . . ." He has six minor children, three of whom (Richard Henry, Jr., Ralph E. and Regipa L.) are minor mixed bloods who were placed under the Affiliated Ute Indian Trust. The file also indicates that Mr. Curry had eleven convictions for minor criminal offenses during the period of January 3, 1958, through July 1, 1959. Superintendent Zollar took no action relative to placing Mr. Curry on a trust or otherwise extending special protection to him in relation to his stock. Mr. Curry was once employed by the Duchesne County Sheriff. He is a veteran of World War II and the Korean

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War, attaining the rank of Sgt. in the armed forces. He is also a high school graduate and is a brother of Reginald Curry, administrative officer for the Ute Indian Tribe.

(b) First Transaction: On or about November 6, 1963, he sold five shares to one Clyde R. Murray for \$500 per share. The stock was offered for sale with the Uintah and Ouray Agency on September 13, 1963, at a price of \$3,500 and no acceptance thereof was received. The offering was completed on November 4, 1963. On the date of sale Mr. Curry executed documents denominated "Stock Power" and "Affidavit", the signature on the Stock Power being guaranteed by Mr. John B. Gale and the Affidavit being notarized by one Jerry Murray, the son of Clyde R. Murray. The Affidavit recited that he had received \$3,500. On November 8, 1963, a certificate was signed by Superintendent Zollar and submitted to First Security Bank reciting that the law and regulations relative to the offering had been complied with. Before he sold this stock he shopped around to see how much he could get. He went to several people from whom he couldn't get more than \$500 per share. On November 8, 1963, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of

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the tribe had been received for such stock. The stock was transferred to the new owner on November 14, 1963, by the bank. Except as in these findings otherwise indicated, Gale did not participate in the sales negotiations and received

nothing from the transaction.

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warning on the certificate. He received \$400 per share therefor in cash. These shares were also covered by the offer to sell referred to in relation to sale number two. The sale was after August 27, 1964. Except as in these findings otherwise indicated, Gale and Haslem had nothing to do with the sales transaction.

(c) Additional Facts: He does not recall whether he saw the front of the certificate. The evidence does not disclose whether he read the warning or not. Mrs. Logan noted the relationship between the transferee and notary in relation to the first sale, when the documents arrived at the Indian Agency Office.

12. Charles T. Reed, M.B. Number 353, sold 10 shares.

(a) Personal Background: His Social Worker's File with the Uintah and Ouray Agency states in part: "Several years ago Mr. Reed was employed by the Bureau Branch of Law and Order. He was discharged because of his drinking. . . . In view of the family history, we believe that Mr. Reed should be placed under the supervision of a Trustee." The file also shows that on April 14, 1960, the Superintendent determined that Mr. Reed was in need of assistance in managing his affairs and was therefore placed under the Affiliated Ute Indian Trust administered by the Bank.

(b) First Transaction: On or about October 5, 1964, Mr. Reed signed, in blank, the obverse of Ute Distribution Corporation Stock Certificate No. 353 and sold

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the same to Mr. Richard Murray. The sale was transacted in Murray's garage at Roosevelt, Utah, and afterwards, his signature was guaranteed by John B. Gale. After the stock certificate was executed by him, the name of "The Benjamin T. Shaw Trust" of Dixon, Illinois, was inserted as the transferee. Reed does not know Shaw nor was he advised that his stock was being purchased for resale or the price at which it was to be resold. Mr. Reed received a 1947 Ford, a 1950 Buick and \$300 in cash.

(c) Additional Facts: On September 17, 1964, the trust committee, consisting of seven bank officers, released Mr. Reed from the Affiliated Ute Indian Trust more than a year after he had requested that he be so released. An attorney

employed by him wrote the Bank requesting his release from the trust and the release of his stock. First Security Bank did not conduct an investigation beyond a consideration of material submitted in support of Reed's request, including affidavits from Reed's employer and from the President of Ute Distribution Corporation attesting his competence. The purchase of his stock was consummated by Richard Murray October 5, 1964. In January, 1964, he had agreed to sell the stock to Murray who advanced him \$40, but the stock was not actually transferred until October after the trust was terminated as to him. When he initially made his deal with Murray, he understood that he was only selling five shares, but

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when he endorsed the certificate it included ten shares and Reed thereafter attempted to protest to Murray who would not listen to him. The agreement between the parties was that Reed would receive, and he did receive, a Ford, a Buick and \$300 for five shares. There is no express evidence as to the value of the cars but the preponderance of the circumstantial evidence indicates that their value could not have been as much as \$2,000. Gale guaranteed the signature in this transaction. Gale did not participate in the sales negotiations except as in the findings of fact found generally.

13. Unless otherwise expressly noted hereinabove, John B. Gale and Verl Haslem, in their indicated actions in carrying out, or in connection with, the sales described hereinabove,

(a) Were acting within the apparent scope of their employment and authority for First Security Bank; that while they had not been expressly directed or authorized by the Bank to purchase, or to participate in the purchase of said stock, they were authorized by the bank to collect notary public fees for the bank in connection with such transactions, to facilitate the transfer of said stock in aid of customers of the bank in acquiring said stock and to maintain deposits in said bank for the mutual benefit of the bank as a depository and of the customers as prospective purchasers to facilitate such acquisitions;

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to acquire for their own accounts or for customers said stock in recognition of their prestige as employees of the bank and through the utilization of bank facilities and with the knowledge that the owners would be likely to have confidence in negotiations participated in by bank employees under such circum-

stances; and the court finds that the bank had knowledge and notice of the activities of Gale and Haslem for their own benefit and for the benefit of others in the acquisition of said stock, and in its own supposed interest as well as in their interest continued to acquiesce in and to ratify such activities; and that the private directions to said employees from other agents of the bank that these activities should be conducted "on their own time" did not reasonably serve to alter the apparent authority established by the bank under the circumstances. The court further finds in this connection that by the bank's conduct, and through the use by Gale and Haslem of bank facilities, it unavoidably led the plaintiffs to reasonably believe that it consented to and approved the conduct of its employees and placed said employees into a position more effectually to acquire, or to facilitate the acquisition by others, of said stock;

(b) Utilized secretaries, stationery, postage and other facilities of First Security Bank;

(c) Received, for and on behalf of First Security Bank, consideration for notarized "Affidavits" utilized in

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transferring plaintiffs' stock;

(d) Never inquired into the truthfulness, completeness or accuracy of each of the statements in said documents;

(e) Never administered an oath or affirmation when guaranteeing signatures or notarizing documents denominated "Affidavit", to which the said plaintiffs were signers;

(f) Never attempted in any manner to dissuade or discourage the sale or transfer of any Ute Distribution Corporation stock by any of the plaintiffs; and

(g) Never advised of any funds or deposits with or held by First Security Bank at its Roosevelt Office of Bernice Vannoy, Tillie Gyllstrom, Neal Phelps, The Carpenters, The Shaw Trust and others for purposes of acquiring Ute Distribution Corporation stock, or the price they, or either of them, had been authorized to pay for said stock, or that they were engaged in the purchase of Ute Distribution Corporation stock as agents for others or for resale or the price at which stock was being resold by them.

14. None of the designated plaintiffs ever had physical possession of or read the Ute Distribution Corporation stock certificates issued in their names, nor were the legends on the said stock certificates ever communicated to them.

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15. Unless otherwise expressly noted hereinabove, none of the designated plaintiffs ever saw or signed any of the Ute Distribution Corporation stock certificates issued in their name.

16. Neither the Bureau of Indian Affairs, the Uintah and Ouray Agency, nor any agent or employee of said Bureau or Agency ever attempted in any way to verify the truthfulness or accuracy of the "Affidavits" presented to said Bureau and Agency, nor to ascertain the circumstances or conditions surrounding the execution of said "Affidavits" or the consideration being paid or given for the related stock transfers.

17. Each of said "Affidavits" recited that the mixed blood affiant had received in cash the price for his Ute Distribution Corporation stock for which it had been posted by the Bureau of Indian Affairs which, except as otherwise expressly noted hereinabove, was not true and was, unless otherwise expressly noted hereunder, known to the named notary to be untrue.

18. At all pertinent times, Messrs. Richard Murray, Clyde R. Murray, Earl Dillman, Richard Bastian, Lloyd Labrum and Wallace Davis were engaged in the business of selling new or used cars in the Uintah Basin Area of Utah, a fact at all pertinent times well known to Messrs. Gale, Haslem and Adelyn H. Logan, Realty Officer, Uintah and Ouray Agency, Bureau of Indian Affairs.

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19. Unless otherwise expressly noted hereinabove, none of the designated plaintiffs ever read the statements printed as legends on the stock certificates either on the certificate or any other document, nor did any officer, agent, or employee of First Security Bank, including defendants Gale and Haslem, undertake to explain to plaintiffs at the time of sale or any other time, the true nature of their stock or its probable value, or to discourage its sale.

Part III

General Findings

A. Relating to Plaintiffs' Claims Against The United States of America

1. No employee or agent of the United States or any person or organization acting pursuant to the authorization of the United States ever undertook or performed any appraisal or evaluation of the mineral assets of the Ute Indian Tribe, of the Uintah and Ouray Reservation, Utah.

2. The Manual of the Bureau of Indian Affairs, as in use in 1963 and 1964, a copy of which said Manual was at all times retained at the Uintah and Ouray Agency, Bureau of Indian Affairs, Ft. Duchesne, Utah, contained express provisions to be followed in appraising Indian lands. (Only one small section pertains to appraisals of mineral values, and is limited to cases when total value of land is being appraised. The Plan for Distribution, Exhibit U-A, specifically exempts appraisal of mineral

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rights in connection with the division of Tribal assets where land values are involved.)

3. At some time after the sales of Ute Distribution Corporation stock commenced, Mr. R. O. Curry, Director of Resources for the Ute Indian Tribe, requested that the geological survey of the United States make funds available for the purpose of appraising the assets which were jointly administered by Ute Distribution Corporation and the Ute Indian Tribe. In response to said request, Mr. Curry was informally advised that such appraisal would not be made because it would be costly and the United States did not desire to divert the personnel from other projects.

4. On October 15, 1964, the Bureau of Indian Affairs' Area Director requested that the Superintendent of the Uintah and Ouray Agency give his observations as to the value of the shares sold. In response to this request, within the short space of eight days, the Superintendent reported the following facts:

(a) That Ute Distribution Corporation had received its share of all oil and gas revenues of approximately \$2,245,300 from Tribal lands or about \$610,000 from that source which,

had it all been distributed to its members, would have amounted to \$1,245 each for the three years involved. (This information covered a period of over three years, during which some eight per capita payments were distributed to stockholders. The information must

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have been known to that degree.)

(b) That because of the Tribe's rejection of bids at three recent oil and gas sales, against the recommendation of the oil and gas supervisor and himself, that immediate revenue in the amount of \$442,760 had not materialized but that bids accepted in two recent sales would mean an immediate income of \$641,645 upon approval of the leases;

(c) That there were approximately 185,000 acres out of a total of 1,236,000 acres out of which minerals were owned that would be under lease for oil and gas by the end of 1964, and that annual rental from that source would total over \$231,000.

(d) That there was one unliquidated claim against the United States of approximately \$8,000,000 as to which Ute Distribution Corporation would receive its share and that there were three remaining small claims not finally adjudicated which might total about \$1,750,000 when finally settled.

None of such information as far as the record discloses was communicated to the designated plaintiffs by the Superintendent.

5. No appraisal of the mineral estate of the Uintah and Ouray Indian Reservation was ever undertaken

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by the Bureau of Indian Affairs for the reason, according to Mrs. Logan, Realty Officer of the Uintah and Ouray Agency, that such an appraisal would be much more difficult than the prior appraisals of the surface estates conveyed to Antelope Sheep Range Company and Rock Creek Cattle Range Company by the Bureau of Indian Affairs.

6. In 1958 the Bureau of Indian Affairs, acting in cooperation with the Ute Indian Tribe, did undertake the appraisal of the assets represented by the capital stock of the two related corporations, Rock Creek Cattle Range Company and the Antelope Sheep Range Company, in connection with the divi-

sion of assets between the Tribe and the mixed-bloods. Subsequent to said appraisal over 90 per cent of the members of the "mixed-blood" group, including all of the plaintiffs herein, sold their stock in said Corporations to the Ute Indian Tribe prior to August 27, 1961, which capital stock was purchased in all instances by the Ute Indian Tribe for \$550 per share. The primary purpose of the appraisals on the two land corporations was to carry out the division of assets found in Public Law 671. These surface appraisals were later used by the Tribe in determining what they should pay for the range stocks. The appraisals were not made for the purposes of fixing the value of the stock at the time of its sale to the Tribe.

7. At all times pertinent to the claims of the plaintiffs herein, the Bureau of Indian Affairs was aware of the fact that Ute Distribution Corporation stock was of substantial value, and that tribal claims of substantial

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value were in the process of compromise and that oil, gas and other useful minerals were known to exist on the Uintah and Ouray Reservation and the Bureau so advised Congress during the Summer of 1961. The Bureau of Indian Affairs did not, however, undertake particularly to advise the designated plaintiffs of those facts except as hereinabove found.

8. As to each sale of plaintiffs' stock, defendant United States of America, performed the following steps prior to August 27, 1964:

(a) Received an "Offer to Sell" which was prepared and signed by the mixed-blood Indian on forms supplied by the Superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs. The "Offer to Sell" specified a sum in cash which would be accepted for the mixed-blood Indian's Ute Distribution Corporation stock.

(b) Posted said "Offer to Sell" at various public places in Uintah and Duchesne Counties, Utah.

(c) Advised the mixed-blood Indians that no offer to purchase had been received pursuant to the terms of the "Offer to Sell" and that said stock could be sold within a period of six months thereafter to any person at the same or greater price and on the same terms and conditions upon which it had been offered.

(d) Received signed documents denominated "stock power" and "affidavit", respectively, both of which were executed by the mixed-blood Indian and were delivered to

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the Agency on occasions by a non-Indian, and came in the mail on other occasions.

(e) Executed a "Certificate" to the effect that the shares had been properly offered at a price specified in the certificate to members of the Ute Indian Tribe in accordance with the law and regulations, which said Certificate was transmitted directly to defendant First Security Bank of Utah, N.A., and never furnished to the purchaser directly or stamped on the stock certificate, and which said Certificate was prepared by Adelyn H. Logan, Realty Officer, and executed by the Superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs, Ft. Duchesne, Utah.

(f) By letter on the letterhead of the Uintah and Ouray Agency, advised First Security Bank that an affidavit had been signed by each of the sellers and was on file in the office, which said letter was prepared by Adelyn H. Logan, Realty Officer and executed by the Superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs.

9. None of the Offers to Sell filed by or on behalf of the mixed-blood stockholders of Ute Distribution Corporation ever specified any consideration except cash. Each of the Affidavits signed by the 12 designated plaintiffs indicated that cash had been received for the stock.

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10. Although the Articles of Incorporation of Ute Distribution Corporation, which had been approved by the Secretary of the Interior as aforesaid, expressly provided in Article VIII that unless the endorsement of the Superintendent of the Uintah and Ouray Agency be endorsed on the stock certificate, the transfer would be invalid, and the stock certificate bore express warnings and notice of restrictions on transferrability thereon, a substitution to this requirement was made upon agreement between the Bank and the Government. It was agreed that a separate certificate would be prepared and mailed to the Bank, rather than the requirement of the endorsement on the back of the certificate itself by the Superintendent. This was done to expedite the procedure and for the convenience of the Bank. The Superintendent's certificate was subsequently attached to the stock certificate by the Bank.

11. In no instance did the Superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs, Ft. Duchesne, Utah, actually certify on the actual stock certificate that the laws and regulations had been complied with, nor was any mixed-blood Indian stockholder, in selling his Ute Distribution Corporation stock, ever permitted, prior to August 27, 1964, to examine or read his Ute Distribution Corporation certificates and the legends

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thereon or to endorse his signature on the assignment form printed thereon.

12. Mr. M. M. Zollar, Superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs, Ft. Duchesne, Utah, was advised by the Area Office of the Bureau of Indian Affairs on July 18, 1963, that "the law requires that the shares be advertised so that the Ute Tribe may have an opportunity to purchase them if they wish. It is felt that sales of stock should be advertised once every three months so that we will comply with the law and also offer a service to the people wishing to sell their shares. This will be a burden on the staff, but we should offer every opportunity for the people owning the shares to secure the best price possible and still fit the advertising in with our workload."

13. The United States Department of the Interior advised Congress on October 13, 1961, and in the various reports of the Commissioner of Indian Affairs, that "a mixed-blood Ute can sell his stock in the Ute Distribution Corporation if he wishes to do so, and the pending Bill [amendment to 25 U.S.C. § 677] will make no change in the law in that respect. The mixed-bloods have been pretty well convinced, however, by an educational campaign that they should not sell their stock because it represents their undivided interest in the minerals and claims, the value of which is uncertain. Valuable minerals are known

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to exist, but their value could fluctuate over a wide range." The Bureau of Indian Affairs undertook no educational campaign among the mixed-bloods to discourage the sale of their stock but was aware of intermittent efforts by others with this in view.

14. A meeting of the Board of Directors of Ute Distribution Corporation was held at Fort Duchesne, Utah, on

September 10, 1963, and was attended by Bert Narcho, Acting Superintendent, Uintah and Ouray Agency, Bureau of Indian Affairs, and Adelyn H. Logan, Realty Officer of the Agency. At said meeting, it was suggested since many of the stockholders lived off the Reservation and knew nothing about the Offers to Sell, that individual notice to each concerning Offers to Sell should be sent to enable them to purchase the offered stock. Mrs. Logan stated that the duty of the United States was only to notify the Corporation of proposed sales and that maybe the Board of Directors should do this, because the Government did not have the funds available to set up a clerk's job to do this work as it would take a full-time job to handle this work. Discussion was had on the efforts of the Board to obtain an "open end" loan from First Security Bank to purchase Ute Distribution Corporation shares being offered for sale. Mrs. Logan informed the Board that a major oil company had contacted her and asked for information on how to buy Ute Distribution Corporation stock being offered for sale.

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She informed them that the advertisements on Offers to Sell were to members of the Tribe only. At said meeting the Board was told that Offers to Sell were to be put in conspicuous places, viz., the U. S. Post Offices in Myton, Randlett, Fort Duchesne, Whiterocks and Duchesne.

Discussion was had on second-hand cars, old models, or any other consideration except cash not being acceptable. The Board was told that the selling stockholder must furnish the Superintendent a signed affidavit certifying that he has received the full amount as offered. Discussion was had on the sale of one Elizabeth Bumgarner who sold her ten shares to Dick E. Bastian of Roosevelt, Utah, who furnished the Superintendent an affidavit that she had received \$5,000, said affidavit notarized by one Earl Dillman. At said time, Mrs. Logan knew Messrs. Bastian and Dillman had interests in a car business in Roosevelt. Mrs. Logan informed the Directors that she had 29 correct Offer to Sell applications signed and ready to be advertised and she estimated that she would have 40 offers by the first of October and that it would take \$99,000 to purchase all of the offered shares.

15. In 1963 and 1964, it was common knowledge in the Uintah Basis area of Utah, including the towns of Roosevelt, Duchesne and Ft. Duchesne, that the mixed-bloods were accepting used cars for their Ute Distribution Corporation stock.

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16. Mrs. Adelyn H. Logan, Realty Officer and Mr. M. M. Zollar, Superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs, knew during the late summer and fall of 1963 that "mixed-blood" Indians were receiving automobiles or other chattels in exchange for their stock rather than the cash consideration stipulated in the "Offer to Sell".

17. Mrs. Adelyn H. Logan, The Realty Officer of the Uintah and Ouray Agency, Bureau of Indian Affairs, Ft. Duchesne, Utah, who was the government official charged with responsibility for the examination of said affidavits, among other things, noted various irregularities, or "bad business practices" appearing on the face of many of the affidavits. But pursuant to instructions from Superintendent Zollar, did nothing beyond noting such irregularities and checking the affidavits to see if they were complete and to see if the amount stated therein by the mixed-blood seller was equal to or more than the amount of his original offer to sell. If so the affidavits were accepted at their face value without further effort being made to determine the regularity of the reported sales. Such defects included the following: erasures, documents notarized by the transferee or a member of his immediate family, names on the notary seal which differed from the name of the purported notary, operative words of the affidavit including the amount of consideration in different handwriting or different colors of ink appearing to have been

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added after the document had been signed, and other similar irregularities.

18. The knowledge of the United States concerning irregularities in sales procedure is further evident in a Memorandum dated April 23, 1965, prepared by Adelyn H. Logan, Realty Officer of the Uintah and Ouray Indian Agency, in which she advised the Superintendent that "in our involvement with our offering 970 shares for 129 members and the furnishing of certificates to the First Security Bank of Utah for the 808 shares sold to non-members prior to August 27, 1964, we could not help but note several irregularities, indicating that an advantage was being taken of some of the sellers. Since, however, the seller furnished us with an affidavit or certified statement to the effect that he had received from the named non-Indian buyer the price he had asked, we did not feel it our responsibility to pursue the matter further." Mrs. Logan further indicated in said Memorandum that, "whether there is a responsibility on the part of the Bureau, now, to present evidence that it has which might be of assistance to the plaintiffs in the case is a matter

to be decided. From the standpoint that we are perhaps quite aware of numerous instances in past years where the Indian people and their interest have been exploited by non-Indians, even though in this case the mixed-blood plaintiffs were actually terminated of Bureau supervision and jurisdiction

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on August 27, 1961, perhaps there is an obligation to become involved." Mrs. Logan was referring to the request by plaintiffs' attorney for assistance in prosecuting their claims against the first defendants named in this action. This was prior to the time the United States was joined as a party.

19. As early as March 19, 1963, the United States Department of the Interior received correspondence from Congressman Samuel M. Friedel, writing on behalf of a "mixed-blood" and complaining that there were certain irregularities in relation to the sale of Ute Distribution Corporation stock. On August 26, 1963, the United States Department of the Interior received a letter from Senator Frank E. Moss of Utah concerning the sales procedure, after both Senators Moss and Bennett of Utah were presented with complaints by an Indian relative to these matters.

20. On November 6, 1963, the Superintendent of the Uintah and Ouray Agency and Mrs. Logan received and read a letter from one R. O. Curry, Director of Resources of the Ute Indian Tribe. The letter read in part:

"I understand that the regulations pertaining to the sale of these [i.e., Ute Distribution Corporation] stock after they have once been offered to the Tribe and members of the Tribe is that they can be sold to any person desiring to purchase them but at not less than the price offered and this is the part that concerns me most. I understand that some of the people have agreed to take automobiles as part payment on

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the stock. It would seem that the acceptance of an automobile would not be fulfilling the requirements of receiving as much as the shares are offered for. For instance with the receipt of an automobile which costs the dealer \$2,000, and his markup of at least \$1,000 or \$1,100--the seller of the shares would receive approximately \$4,000 in value instead of \$5,000 if he had offered for \$5,000. I was wondering if the regulations could be construed to require the seller to receive only cash instead of equipment and chattels as they may pass hands in some instances. I wondered if this might be discussed with

our attorney or your Field Solicitor to see if the receipt of chattels is a violation of the sale agreement as I am sure that some of the sellers may be taken advantage of by automobile salesmen who are anxious to obtain some of these shares of stock and at the same time effect the sale of an automobile."

Neither the Superintendent nor the Realty Officer ever answered or otherwise responded to this letter until upon a telephone call from Mr. Curry, Mrs. Logan gave him the substance of the note next following. Mrs. Logan wrote in the margin of the letter:

"Note for Files. This memo was discussed with Mr. Z. [Superintendent Zollar], but he did not think the points raised should be a further concern of ours since the members have been terminated; the stock is unrestricted, and they are therefore free to do whatever they wish as long as the Bureau complies with CFR 243 which we still do til 8-27-64."

21. On November 5, 1963, when he received the aforesaid letter from Mr. R. O. Curry, Superintendent Zollar, acting for the Secretary of the Interior, adopted the position that he would not interfere with the sales because he had no responsibility to do so after August 27, 1961.

22. The immediate determination as to whether the individual mixed-blood was competent to manage his

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own affairs and whether the individual mixed-blood should be placed under the express provisions of the Affiliated Ute Indian Trust Agreement was made by the Superintendent of the Uintah and Ouray Reservation.

23. On November 7, 1963, Mr. R. O. Curry, Director of Resources for the Ute Indian Tribe, addressed a form letter to all persons who had, at that time, offered their stock for sale, in which he pointed out that "a sale for cash is much more desirable than accepting equipment or an automobile on the purchase Price" and that if the stockholder had not already committed his stock to someone, "it might be to your advantage to wait until after the 12th of November to see what the Tribe might have in mind." Thereafter, the Tribe did not purchase any shares of stock at all. No decision was made on this question because the members of the Business Committee were not in agreement as to whether the stock should be purchased or not. The Tribe did not know how much the stock was worth and had no money in their budget at that particular time for the purchase of the stock. The Tribal Business Committee did know that

there were unadjudicated claims against the Government and that there was oil and gas on the Reservation. They also knew that there was asphalt, gilsonite and coal on the Reservation. In the absence of any appraisal, the significance of this knowledge was minimized, but the Business Committee knew that the stock was of substantial value.

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24. Plaintiffs originally brought this action against the bank, Gale, Haslem and other individuals on February 17, 1965. After various proceedings were had, the complaint was amended by a Second Amended Complaint on February 11, 1966, on which latter date the United States of America for the first time was made a party defendant. The United States did not fraudulently or otherwise conceal or secrete from the plaintiffs the existence of any cause of action or claim against the United States, and the running of the statute of limitations in favor of the United States was not thereby tolled. The designated plaintiffs did not in fact realize, discover or believe that they had a claim against the United States until within two years of the joinder of the United States as a defendant in this action. The named plaintiffs were in need of counsel, advice and assistance looking to the retention of their stock interests which the United States through its Bureau of Indian Affairs was peculiarly in a position to extend within the limitations established by law and regulations.

25. Prior to the adoption of Public Law 671 and the organization of the Ute Distribution Corporation, the Bureau of Indian Affairs was aware that in the past the Ute Indians had been sold useless or inappropriate chattels including, in particular, automobiles which were overvalued or not necessary or appropriate for the purposes of the buyers.

26. Prior to the adoption of Public Law 671, the Bureau of Indian Affairs was aware that an appraisal of the mineral assets of the Ute Indian Tribe would be desirable in order to protect the interests of the mixed-blood Ute Indian with respect thereto and in connection

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with the evaluation and sale of their Ute Distribution stock. Representatives of the Bureau, at hearings at Fort Duchesne, Utah, prior to the adoption of Public Law 671, inferred to the members of the Tribe, that such an appraisal would thereafter be undertaken.

B. Relating to Plaintiffs' Claims Against First Security Bank, John B. Gale and Verl Haslem.

1. At all times pertinent to the claims of defendants herein, Mr. Ralph D. Cowan was vice president and trust officer of First Security Bank of Utah, N.A. Mr. C. Tab George was assistant trust officer of First Security Bank of Utah from August, 1963, to March 14, 1964. At all material times, Mr. George W. Bateman was a vice president of First Security Bank.

2. At all times pertinent to the claims of plaintiffs herein, defendant John B. Gale was (a) an elected Justice of the Peace; (b) handled most notarizations of affidavits and guaranteed most of the signatures on the stock powers and certificates. He guaranteed the signatures as an agent of First Security. Most of the stock transfer functions were handled by bank personnel located in the trust office in Salt Lake City; (c) was authorized by the bank to extend loans up to \$500 without the approval of any other bank officer, and was in charge of the Timeway Loan Department of the Roosevelt Branch; (d) was authorized by the bank to issue and execute cashier's checks on the bank up to \$2,500 without prior approval of any other bank officer; (e) was authorized by the bank to notarize documents and to charge and collect for the bank fees for said service; (f) had full access to all loan records of any of the plaintiffs having loans with the bank and to any financial records maintained by the bank in connection therewith; (g) had full access to

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duplicate transfer records of Ute Distribution Corporation which contained the name of the transferor, dates of transfer, number of shares transferred, name and address of transferee, and the number of shares, if any, retained by the transferee.

3. At all times pertinent to the claims of plaintiffs herein, defendant Verl Haslem was (a) authorized by the Bank to notarize documents and to charge and collect for the bank fees for said service; (b) had full access to available financial records and loan records of any of the plaintiffs having loans with the bank; (c) had full access to duplicate transfer records of Ute Distribution Corporation, which contained the name of the transferor, date of transfer, the number of shares transferred, the name and address of the transferee, and the number of shares, if any, retained by the transferor.

4. At all times pertinent to plaintiffs' claims, defendant First Security Bank of Utah, N.A., had in its possession copies of the Articles of Incorporation of Ute Distribution Corporation, the Regulations promulgated by the Secretary of the Interior relating to Ute Distribution Corporation and the stock certificates of Ute Distribution Corporation owned by the mixed blood Ute Indian stockholders, and by virtue of such possession, and the execution of the aforesaid business agent agreement and trust agreement, was chargeable with notice of the contents of the said Articles of Incorporation and charged with responsibility.

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5. First Security Bank assumed the duty of a transfer agent in connection with all Ute Distribution Corporation stock transfers. It represented to the Executive Director of the Affiliated Ute Citizens, ("mixed-bloods") that upon execution of the stock transfer agreement, "it would be our [i.e., the bank's] duty to see that these transfers were properly made." It was further represented that the Roosevelt Office of the Bank would perform a function in relation to the presentation of certificates for transfer and in relation to the stockholder who did not live in the area of Roosevelt, and that "the Corporation would not be involved in this, as the Bank would be acting for the individual stockholders."

6. After delivery to First Security Bank of the Ute Distribution Corporation stock certificates, execution of the business agent and trust agreements and receipt of a certain letter from attorney John S. Boyden for and on behalf of the Ute Distribution Corporation, discussed hereinunder, the Bank indicated that it considered that it held the certificates belonging to the beneficiaries of the trust pursuant to Article V of the Trust Agreement; but there was no agreement, understanding or indication that the bank held pursuant to and bound by said trust agreement the certificates of others not specifically designated as beneficiaries under said Trust Agreement.

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7. Three additional mixed-bloods were added to "Schedule A" to the Trust Agreement of July 26, 1960, as named beneficiaries and bound by the provisions thereof, by letter from the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs from time to time after execution of the said Agreement. Only one of the designated plaintiffs, Charles T. Reed, was added, then removed, before his stock was transferred.

8. Mr. John S. Boyden, as attorney for Ute Distribution Corporation, on July 22, 1959, advised First Security Bank, as follows:

(a) That the Ute Distribution Corporation had adopted the following resolution: "The Board of directors by unanimous vote direct their attorney, John S. Boyden, to write a letter to the First Security Bank of Utah, N.A., asking said Bank, as transfer agent, to discourage the sale of stock of the Ute Distribution Corporation by any of its stockholders and to emphasize and stress to the said stockholders the importance of retaining said stock."

(b) That the Bank was to "impress upon anyone desiring to make a transfer that there is no possible way of determining the true value of this stock," and that such stock "represents their distributive share" of the mineral interests in the reservation and the proceeds of judgments against the United States.

(c) That the Bank was to discourage the mortgaging, pledging or in any way jeopardizing the ownership of Ute

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Distribution Corporation stock because such practices "may result in very unfair practices".

9. In said letter dated July 22, 1959, attorney John S. Boyden further instructed First Security Bank that the stock of Ute Distribution Corporation was not to be delivered to its stockholders, but was to be retained by First Security Bank. This procedure was to be followed, according to Mr. Boyden, because of some rather unfavorable experiences which the Indian service had had with the loss by Indians of valuable instruments.

10. Trust officers of First Security Bank at its Main Office in Salt Lake City, Utah, received the said letter from Mr. Boyden and gave no notice to him or to the tribe that it would not follow the advice therein given. No stock was sold by plaintiffs until several years after the Boyden letter. The Bank did in fact retain possession of the stock certificates pursuant to Mr. Boyden's advice.

11. Prior to actual drafting of the Trust Agreement, the trust business arising from Public Law 671 was actively solicited by the president of First Security Corporation, who indicated the Bank's strong desire to obtain it for commercial reasons, and by the vice president of the Bank who wrote to Mr. A. H. Harris, Executive Director of the Affiliated Ute

Citizens, on January 16, 1958, and represented that First Security Bank would act as "trustee for trusts established by individuals who are not minors or incompetents."

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12. Prior to August 27, 1967, no First Security Bank agent consummated the transfer of any designated plaintiffs' stock until he had signed an "affidavit" declaring that he had received the advertised value for the stock. The letter of September 23, 1963, from the Bank's trust officer Cowan inaugurated this "affidavit" system:

"In the event the offer to sell is not accepted by a member of the tribe within the time permitted by the regulations, then it would appear the following procedure should be followed:

"1. The stockholder offering this stock for sale will be notified by the Agency that his offer has not been accepted by a member of the Tribe and that he is free to sell his stock at a price not less than that indicated in his offer to sell.

"2. When he has found a buyer he will furnish the Superintendent with evidence satisfactory to the Superintendent that a sale has been made at a price not less than that indicated in the offer to sell, and will deposit with the Superintendent a stock power assigning the shares sold to the purchaser."

The "affidavit" was adopted to be the "evidence satisfactory to the superintendent".

13. By an agreement made and entered into July 26, 1960, entitled "Affiliated Ute Indian Trust Agreement" First Security Bank became a Trustee as to certain named mixed-bloods who were either minors or determined by the United States to be non compos mentis or in need of assistance in managing their affairs including in particular, Stewart Eugene Reed, who was a minor and Charles T. Reed, who was determined to be in need of assistance, and both of whom are designated plaintiffs herein. Neither of those

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plaintiffs was under the trust at the time he sold his stock. Stewart Eugene had become an adult and the trust had by its terms automatically terminated as to him. Charles T. was released from the trust by the trust committee, and such action

was not shown to have been arbitrary or capricious. The Bank trust committee, by the terms of the contract had the power to terminate it as to any adult beneficiary.

14. On or about February 13, 1964, Mr. Gale was informed by the President of Ute Distribution Corporation that no more certificates would be signed until the selling stockholder had received his money as advertised. On or about said date, Mr. Gale informed the President of Ute Distribution Corporation that the procedure being followed by First Security Bank required the buyer of Ute Distribution Corporation stock to deposit with the Bank the full purchase price which the Bank paid over to the seller when the stock certificates are signed. This statement by Mr. Gale to the President of Ute Distribution Corporation was not true.

15. In correspondence between the Salt Lake City branch of First Security Bank and its Roosevelt office, prior to August 27, 1964, First Security Bank required that all Ute Distribution Corporation stock certificates reissued in the name of a mixed-blood be returned to the Main Office of the Bank and retained in its files until August 27, 1964, whereas stock certificates

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issued or reissued to non-"mixed-bloods" were delivered to the stockholder.

16. First Security Bank took the position, at all times prior to August 27, 1964, that it was entitled to keep and retain the Ute Distribution Corporation stock certificate owned by all of the mixed-bloods and did so until they were transferred or until after August 27, 1964. The proof is insufficient to show that this in and of itself was the direct cause of damage in any particular case and the evidence indicates that the retention system was established in good faith for convenience and in the supposed interest of the Indians; but it did minimize the dissemination of warnings against the disposal of stock and encourage acquisitions of stock from half-bloods without the warnings being impressed upon them.

17. Ute Distribution Corporation was interested in purchasing and attempted to purchase its shares of stock which had been offered for sale. A meeting of the Board of Directors of Ute Distribution Corporation was held at Salt Lake City, Utah, on September 6, 1963, and was attended by Messrs. Cowan, George and Bateman. The purpose of the meeting was to discuss a group loan to enable the purchase of Ute

Distribution Corporation stock shares being posted for sale. Discussion on such a loan was held. The Bank representatives advised that Ute Distribution Corporation stock certificates would not be deemed sufficient

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collateral for such a loan. Such a loan was never made by First Security Bank. It was agreed that the Ute Distribution Corporation stock certificates of all mixed-blood members were to be retained by the First Security Bank until August 27, 1964.

18. First Security Bank prescribed the manner in which the stock powers were to be executed in a letter to Superintendent Zollar dated October 19, 1960, and specifically authorized the execution of stock powers and the acceptance of such powers by the United States prior to the time when the identity of the transferee was known, but no transfer was made until the affidavit disclosed the consideration the Indian claimed he had received.

19. A meeting of the Board of Directors of Ute Distribution Corporation was held at Salt Lake City, Utah, on November 14, 1963, and was attended by Mr. Cowan. It was determined at the said meeting the responsibility for determining that the affidavits being signed by the mixed-blood members relating to their Ute Distribution Corporation stock was upon the Superintendent. Discussion was had on the sale by mixed-blood members of their Ute Distribution Corporation stock for used cars. The assignment of the Ute Distribution Corporation stock of Leonard Richard Burson to First Security Bank for a loan was discussed.

20. A meeting for the Board of Directors of Ute Distribution Corporation was held at Salt Lake City, Utah,

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on February 7, 1964, and was attended by Mr. Anderson and Mr. Tab George, officials of First Security Bank in Salt Lake City. Discussion was had on the subject of Mrs. Anita Reyos having signed an affidavit in blank that she had received cash for her Ute Distribution Corporation stock, that she had not received said cash and her statement that said affidavit had been signed by her on December 23, 1963, but had been notarized November 11, 1963, and that the check had been made payable to Dick Bastian and the Bank.

21. A meeting of the Board of Directors of Ute Distribution Corporation was held at Salt Lake City, Utah, on April 25, 1964, and was attended by Mr. Cowan and Mr. Leon Olsen, a trust officer of First Security Bank. A letter of one Samuel W. Bumgarner was read. Said letter made complaint about the sale by Mr. Bumgarner to one Earl Dillman of his Ute Distribution Corporation stock that Mr. Bumgarner had not received the balance owed him on his stock.

22. The Bank prescribed the manner in which the stock powers were to be executed in a letter to Superintendent Zollar dated October 19, 1960, and specifically authorized the execution of stock powers and the acceptance of such powers by the United States proper to the time when the identity of the transferee was known and when the exact amount of consideration was as

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yet undetermined, but no transfer was completed until an affidavit was furnished specifying a consideration.

23. The Bank established the procedure to be followed in all sales of Ute Distribution stock in a letter dated September 23, 1963, copies of which were submitted to Superintendent Zollar. Significant portions of these instructions include the following:

(a) It was provided that if a member of the Tribe determined to make a purchase pursuant to the offer to sell, he must make a deposit of at least 10 per cent of the purchase price and pay the balance within 30 days and that such payments were to be made through the Indian Agency.

(b) It was provided that a "stock power" in a form which was supplied by the Bank should be executed in lieu of the endorsement of the stock certificate.

(c) Reissued stock certificates were to be forwarded to the Roosevelt office of the First Security Bank for final execution.

(d) In the event a member of the Tribe did not determine to purchase, it was stipulated that after the selling stockholder had found a buyer, he would "furnish the Superintendent with evidence satisfactory to the Superintendent" that a sale had been made at a price not less than that indicated in the offer.

(e) The Superintendent was to forward to First Security Bank the stock power together with his certificate

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to the effect that the offering requirements and the law and regulations had been complied with.

24. The sale and transfer procedure pertaining to Ute Distribution Corporation stock established by First Security Bank was a deviation from the precise procedure (a) specified in the Articles of Incorporation of Ute Distribution Corporation, (b) imprinted upon the stock certificates, and (c) contained in Public Law 671 and the regulations thereunder, in the following particulars:

(a) In that a stock power was accepted in lieu of the endorsement of the assignment imprinted on the obverse of the stock certificate.

(b) In that the selling stockholder, rather than the purchaser or the Superintendent, was required to furnish evidence that the law and regulations had been complied with.

(c) In that the Certificate of the Superintendent that the law and regulations had been complied with was supplied to the Bank, rather than to the purchaser.

First Security Bank was at all times material to plaintiffs' claims herein, aware of the requirements of the Articles of Incorporation of Ute Distribution Corporation of the law and regulations and knowingly permitted or acquiesced in the above enumerated deviations because it had determined that it was inconvenient for the Bank to follow the precise procedure prescribed in the Articles

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and Regulations and it appeared that the procedure utilized was in substantial compliance and agreeable to the officers of the Ute Distribution Corporation.

25. First Security Bank of Utah, at various times prior to August 27, 1964, was aware that various provisions of the law and regulations relative to the transfers of stock were being circumvented but failed to take any action with respect thereto. Such irregularities included the following:

(a) Documents of transfer indicated that assignments of stock were being taken, and part consideration paid therefor, prior to the time when the posting or advertising requirements of law had been complied with.

(b) Stock certificates of Indians containing undated endorsements were accepted for transfer after August 27, 1964, without determining if the transfer was in fact prior to August 27, 1964; and a prior offer to the members of the Ute Indian Tribe a prerequisite therefor.

(c) Documents of transfer were accepted on the stationery of automobile dealers, or under other circumstances, indicating that the mixed-blood Indian was receiving consideration other than cash.

(d) In various instances the Bank received documents indicating that the Indian was, in fact, receiving an automobile rather than the cash recited in his Affidavit.

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(e) Bank official purposely held stock certificates until after August 27, 1964, so as to avoid the advertising requirements and advised prospective purchasers to delay making any transactions until after that date for the purpose of avoiding the requirements and restrictions of the law.

26. At all times pertinent to plaintiffs' claims herein, First Security Bank required that an official at its Roosevelt office, or some other bank, guarantee the signature of the selling stockholder as distinguished from the mere witness of the signature. In situations where the signature was merely witnessed by a bank official, the certificate was returned and transfer refused until such time as a signature guarantee had been obtained.

27. At all times pertinent to plaintiffs' claims herein, First Security Bank was fully aware that the acts of Mr. Gale and Mr. Haslem in guaranteeing the signature of mixed bloods on stock powers relating to Ute Distribution Corporation stock imposed liabilities and responsibilities upon the Bank which the law imposes on guarantors of signatures.

28. Reports of financial and other business transactions effected at the Roosevelt Branch of the First Security Bank were transmitted daily and monthly by the Branch to the Bank's Main Office in Salt Lake City, Utah.

29. First Security accepted stock transfers by non-Indians prior to August 27, 1964, only if its records indicated that the requirements of Public Law 671 and the

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regulations had previously been complied with by the original Indian owner, in which event the Bank accepted transfers by non-Indians without evidence of posting and unaccepted offers.

30. By reason of the said Agreement of December 31, 1958, the said Affiliated Ute Indian Trust Agreement of July 26, 1960, the said Boyden letter of July 22, 1959, and the implementation of the said agreements and instructions by First Security Bank, said Bank and its agents including Mr. Gale and Mr. Haslem came into possession of inside information about Ute Distribution Corporation, its bank deposits, its cash distributions to stockholders, pending receipts, and its assets, and of personal and confidential information and financial records of mixed-blood stockholder of Ute Distribution Corporation beyond that generally available to the plaintiffs.

31. By reason of the said Agreement of December 31, 1958, the Boyden letter of July 22, 1959, and the instructions therein and the acceptance thereof by the Bank, and the knowledge and information obtained by the Bank thereunder, the Bank's possession of and knowledge of the contents of the Articles of Incorporation and stock certificates of Ute Distribution Corporation, the Affiliated Ute Indian Trust Agreement of July 26, 1960, the representations of Bank officers as to the scope and purpose thereof, and the information obtained by the Bank thereunder, the functions and responsibilities it had and

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assumed in relation to the stock of the Ute Distribution Corporation and the transfer thereof, and the trust and confidence naturally and reasonably imposed in it under all of the circumstances in evidence by the mixed-bloods, First Security Bank and its agents, including Mr. Gale and Mr. Haslem were at all times pertinent to plaintiffs' claims fiduciaries in the sense that they occupied a position of trust and confidence with reference to the Ute Distribution Corporation and each of the mixed-blood stockholders of Ute Distribution Corporation.

32. Gale and Haslem received various fees, commissions, bonuses, tips, or gratuities from non-Indians for their services in facilitating the transfer of the Ute Distribution Corporation stock from mixed-blood Indians to non-Indians and on at

least one occasion an employee in the Salt Lake Office of the Bank received a small gratuity for facilitating such a transfer.

33. At all times pertinent to the claims of plaintiffs herein, defendants John B. Gale, and Verl Haslem were regularly engaged in the act, practice, and course of business of purchasing, both as principal and as agent for undisclosed principals out of the State of Utah, capital stock of Ute Distribution Corporation from mixed-blood stockholders. Mr. Gale worked with Mr. Richard Murray who made contact with the mixed-blood stockholder and arranged the purchase terms, and Mr. Gale would provide the funds, either before actual sale as "advances" to the mixed-blood stockholder, or at the time of the signing of,

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various documents before Mr. Gale.

On a number of such transactions where Mr. Gale and Mr. Murray worked together Mr. Gale would pay Mr. Murray, in cash, one half of the profits or commissions realized by Mr. Gale therefrom. In a number of such instances, Mr. Murray actually paid the mixed-blood for his stock in whole or part by an equity in a used automobile, which said fact was well known to Mr. Gale. Mr. Gale deposited with or held at First Security Bank, Roosevelt office, funds for various non-Indian out-of-state buyers, including Phelp, Carpenter, Vannoy, Shaw Trust, and others. The fact of such funds being so held, the amounts thereof, the names of any of such persons or the prices they were willing to pay, were never, at any time, disclosed to any of the mixed-blood stockholders of Ute Distribution Corporation.

Mr. Gale also worked with one Elmo Matthews, one Mills Tooke, and one John Benson, who located out-of-state buyers of Ute Distribution Corporation stock. Said Haslem and Gale also actively solicited contracts for open purchase of Ute Distribution Corporation stock from and for persons who were non-Indians. Such activities were conducted on First Security Bank premises, during Bank business hours, using Bank stationery and secretarial personnel and Bank facilities. These activities of Mr. Gale and Mrs. Haslem, acting individually and in concert with others, materially and substantially affected the offer.

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and sell prices of Ute Distribution Corporation stock in 1963, 1964 and 1965.

34. The effect of the participation of Gale and Haslem on the market was minimized by other transactions some of which, it is fair to say, were encouraged by the Bank's participation in other similar transactions and many of which were independently consummated. During 1963 and 1964, mixed-bloods sold 1,387 shares. Fifty of those shares were bought by Verl Haslem (all after August 27, 1964) and 63 by John Gale (44 prior to August 27 and 19 after). Out of the 1,387 shares sold to white men by mixed-bloods in 1963 and 1964, Gale and Haslem together directly bought 113 shares or 8 1/3% of the shares sold by mixed-bloods during those two years. Of the 120 shares sold by the twelve bellwether plaintiffs, Gale directly purchased 10 (5 from Glen Reed and 5 from Wopsock) and Haslem purchased 6 (5 from Glen Reed and 1 from Arthur Workman). Thirty-two other white men who bought directly from mixed-bloods during 1963-64, included the following: Clyde Murray, Richard Murray, Earl Dillman, Clive Sprouse, Richard Bastian, Jack Turner, Sewell Massey, William Hoopes, LaVere Labrum, Robert Huish, John Chasel, Orin Swain, Wallace A. Davis, Lloyd Labrum, Gordon E. Harmston, Lionel Jensen, James E. Bacon, N. J. Maugher, Jr., Lawrence Luck, Glen L. Anderson, Don Showalter, R. V. Larson, Don Culver, George Houston, J. H. Geerlings, Guy Davis, Kenneth Phillips, Eugene Harmston, Alvin Bowden, Marsden L. Larson, Edgar Glader and George Morris. However, as to all of the

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designated plaintiffs, Gale or Haslem performed significant steps in implementing their sales as above found and the evidence suggests that this is possibly true concerning the sales of numerous other plaintiffs.

35. Neither Ralph D. Cowan nor any other officer, agent or employee of defendant First Security Bank ever discussed with defendants Gale and Haslem their trust and fiduciary duties respecting Ute Distribution Corporation and mixed blood Ute Indians of said Corporation, even though officials at the Main Office of said Bank were, at all times pertinent to plaintiffs' claims herein, aware that defendants Gale and Haslem, were buying and selling shares of capital stock of Ute Distribution Corporation, both on their own behalf and as agents for others for a fee and which said conduct created a conflict of interest.

36. The deposits of large sums of money at the Roosevelt Office of the First Security Bank by prospective out of state purchasers of Ute Distribution Corporation stock, as aforesaid, was deemed good business for the Bank and the Bank benefited therefrom.

37. The United States mails and other facilities of interstate commerce were regularly employed by defendants First Security Bank of Utah, N.A., John B. Gale and Verl Haslem in connection with the sale and transfer of the shares of capital stock of the plaintiffs herein.

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C. Relating Further to the Question of Liability on the Part of the Defendants.

1. Defendant United States of America did not act arbitrarily or capriciously in the exercise of its discretionary functions referred to in the Conclusions of Law with reference to the following matters:

(a) In fixing the time and circumstance of the termination of federal supervision over the trust and restricted property of the mixed-blood members of the Tribe pursuant to law.

(b) In approving the organization of the Ute Distribution Corporation and its activities and functions.

(c) In approving the conditions and procedure whereby mixed-bloods could sell their stock in said corporation as authorized by statute and regulation.

(d) In approving the terms and conditions of the express trust with reference to the property of mixed-bloods who were minors or deemed incompetent to handle their own property.

(e) In designating and approving the trustee.

(f) In approving in connection with the trustee bank those who should be included or eliminated from said express trust, the court also finding in this connection that the bank, in view of the statutory and regulatory plan, did not abuse its legitimate or reasonable discretion in making such determinations.

(g) In declining to conduct a general educational campaign among members of the mixed-blood to discourage the alienation of their stock in Ute Distribution Corporation.

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(h) In failing to order or undertake an appraisal of the mineral interests owned by the Ute Distribution Corporation in undistributed lands.

2. The court believes that some of the actions or failures of the defendant United States of America in certain of the discretionary areas mentioned above, particularly in retrospect, were unwise or ill-advised, but in view of the natural aspirations of the mixed-bloods toward self-sufficiency and determination, the statutory mandate and authority to this end, the necessity of arriving at judgments with regard to the implementation of such authority and other related considerations, the court cannot find that there was abuse of the discretion of the Bureau of Indian Affairs or any other agency of the defendant United States of America in the respects mentioned; and as determined in the Conclusions of Law hereafter no liability can be found upon the basis of the exercise of these discretionary functions pursuant to the express limitations of the Federal Tort Claims Act.

3. As found hereafter as a conclusion of law, while a trust relationship generally was terminated as to the mixed-bloods prior to August 27, 1964, limited aspects of the federal trust relationship continued until the latter date with respect to the restrictions governing the alienation of stock in Ute Distribution Corporation issued to mixed-bloods and related considerations. Both as a part of such continuing duties and in connection with functions and duties assumed by the United States of America and particularly its Bureau of Indian Affairs, the defendant United States of America was under

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the duty to use reasonable care to the extent it lent its offices and assistance to the alienation of such stock to discourage and prevent the inconsiderate, improper, illegal and improvident sale to white persons.

4. With respect to each of the designated plaintiffs the defendant United States of America, through its officers and agents acting within the scope of their authority, by transmittals of information and the execution of certificates or other documents as in the findings more particularly detailed above facilitated the sale of stock of the Ute Distribution Corporation; that if due care had been exercised by the defendant United States of America in avoiding or preventing irregularities in connection with illegal and improvident sales, said sales would not have been made and that the sales of their stock by the designated plaintiffs was the proximate result of the failure of the said United States of America through its officers and agents to use reasonable care.

5. More particularly the court finds that the regula-

tory plan for the transfer of stock of the mixed-bloods, and the designation of the bank as an agency of the government for this purpose, while involving discretionary functions and decisions, established a situation in which it was especially important for the government to be aware and vigilant concerning the possibilities of the mixed-bloods' being imposed upon in view of such a system; and it became and was the duty of the government under all of the circumstances to use reasonable care to ascertain whether its system through subterfuge or abuse was

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being utilized to avoid the substantive requirement of fair dealing with the Indians in spite of form and to use reasonable care to see to it that its agent the bank and its employees through conflicts of interest or otherwise did not deal unjustly with said Indians in respect to the transfer of said stock.

6. That the United States of America through its agents and employees and the Bureau of Indian Affairs had reasonable cause to know that the mixed-bloods were being imposed on and victimized in the acquisition of their stock by white persons through the agency of bank employees and nonetheless took affirmative steps to implement and facilitate the acquisition of the stock of the designated plaintiffs by white persons as in these findings more specifically set out without using reasonable care and taking reasonable steps required in the exercise of reasonable care to prevent said sales to terminate the adverse dealings of said bank employees and to dissuade the designated plaintiffs from selling said stock under the circumstances or at least to fairly bring to the attention of prospective sellers all pertinent facts within the government's knowledge before the government affirmatively implemented the sale of stock in the various cases. As to the designated plaintiffs this the government failed to do.

7. That such negligence on the part of the employees and agents of the defendant United States of America acting within the scope of their authority was the proximate cause of the sale of said stock by the designated plaintiffs.

8. That the designated plaintiffs while not incompetent in the narrow sense of the term, were generally unversed in business transactions, were acting under extreme

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financial pressures and did not have the judgment, capacity or restraint common to white people of their ages and educations.

That aside from Joseph A. Workman and Oran Curry, the designated defendants were generally uninformed and unaware of the potential value of said stock and none of the designated plaintiffs had information or advice sufficient to bring home to them the possibility that such stock eventually might become exceedingly valuable, and particularly were not on reasonable notice until within two years from the institution of this action that they had sold their stock as a result of an unlawful plan or artifice on the part of the bank as negligently permitted and implemented on the part of the government.

9. With the exception of the said Joseph A. Workman and Oran Curry the designated defendants were not contributorily negligent in selling their stock and are not barred by contributory negligence from recovery herein; nor are any of the designated plaintiffs in pari delicto with the defendant bank.

10. That the designated plaintiffs in form subscribed to affidavits which were not full, true and accurate but were not in a position or with information or training sufficient to exercise a considered judgment in this respect and were induced to do so by the purchasers of said stock with the acquiescence and assistance of said agents of the bank:

11. That any irregularities on the part of the designated plaintiffs in the execution of affidavits was not the proximate cause of said plaintiffs' damages since the United States was upon notice of such irregularities and the gist of

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designated plaintiffs' damages beyond their failure to receive the advertised price was the failure to receive the full market value of said stock.

12. That the defendants Gale and Haslem devised a plan of scheme to acquire stock in the Ute Distribution Corporation from the mixed-bloods and to aid and abet others in acquiring such stock for their own profit, the profit of others and in order to promote bank deposits and activity in other respects. By means of withholding information necessary to render what was stated or implied by them not misleading, and in violation of their duties to make a full and fair disclosure to the designated plaintiffs, they aided, abetted and assisted, or directly and completely accomplished the acquisition of said stock from each of the designated mixed-bloods for substantially less than the fair market value of said stock.

13. The defendant Bank was reasonably put upon, and charged with, notice of the improper activities of said employ-

ees and was aware of the utilization by said employees of the facilities and prestige of the Bank in accomplishing or aiding in the accomplishment of personal stock acquisitions and created the apparent authority on the part of said agents to accomplish or aid in the accomplishment of said acquisitions and knowingly created or permitted the appearance reasonably relied upon and accepted by the designated plaintiffs as an indication that the Bank consented to have said conduct carried on in its behalf by said employees. The said employees had apparent authority to make the representations they did and to conduct the business they did and under all the circumstances of this case the bank is responsible for the conduct of said employees

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notwithstanding that otherwise the bank acted in good faith and its other officers, agents or employees generally had no part in the improper activity with the exceptions hereinabove referred to.

D. Relating to Damages.

1. The Ute distribution Corporation was organized pursuant to the laws of the State of Utah as a conduit through which the individual mixed-blood Indians were to receive a proportionate share of the Tribe's interest in (a) Unajudicated and unliquidated claims against the United States and (b) The other assets, viz, underlying minerals not susceptible of practical distribution. The Ute Distribution Corporation owned no other assets and engaged in no business except the managing, jointly with the Ute Indian Tribal Council, of the mineral assets and distribution of the proceeds therefrom.

2. The principal mineral rights owned by the Ute Indian tribe of the Uintah and Ouray Reservation consists of so-called oil shale deposits. Oil shale is known to exist in the greatest concentration in the Parachute Creek Member of the tertiary Green River Formation as well as in other members of the Green River Formation, which said member and formation entirely underlie the Uintah and Ouray Reservation with the exception of a strip on its northern boundary. Oil shale in that area is known to have substantial present value and great potential value, the timing of the development of which depends upon technological and practical considerations. There is also considerable oil and gas as well as coal and other minerals.

[1091]

3. Pursuant to the plan of distribution of the assets of the mixed-blood members of the Ute Indian tribe the United States retained the sum of \$1200 from the funds of each and every plaintiff to be held in the United States Treasury to pay administration costs and expenses for the [pl's Ex 76- (hand-

written)] prosecution of claims against the United States. The interest of each of the plaintiffs in this \$1200 to the extent unexpended was transferred to the purchasers at the time of the sale of plaintiffs' stock.

4. Sale by plaintiffs of their stock also transferred their interest in the sum of \$7,900,586.16, which was appropriated for the confederated bands of the Ute Indians as a result of an award by the Indians Claims Commission with respect to docket number 327 in 1965. Of said sum \$1,173,632.23 was distributed to stockholders in the Ute Distribution Corporation.

5. Sale by plaintiffs of their stock in Ute Distribution Corporation also resulted in the transfer by them of their interest in additional claims against the United States which have not yet been finally adjudicated. Such claims included a stipulated judgment of in excess of \$7,000,000 which moneys have not yet been appropriated and a special appropriation of in excess of \$500,000 which is presently pending before Congress, and which if realized will result in the distribution of the share of the mixed-bloods to stockholders of said corporation.

6. The evidence indicates that during the years 1964 and 1965, stock in the Ute Distribution Company was being sold by mixed-bloods at a price between \$300 and \$700 per share. The evidence also indicates that during such period

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stock was being purchased and sold between white persons for prices of approximately \$500 to \$700 per share. What the stock has sold for since the institution of this action is not revealed meaningfully by the evidence, although presumably subsequent to the institution of the action there would be reflected in sales prices at least to a degree the revelations and contentions incident to this litigation.

7. While considerable market data are available concerning the value of said stock, such data are not deemed fully indicative of the fair value of the stock for the purposes of this action. The prices paid during said period were influenced by the improper activities of Gale and Haslem and the negligence of the government as herein found, and by the facts that the typical Indian seller was not as well informed of the potential value of said stock as the typical buyers, the numbers of sellers exceeded the number of buyers, and the typical Indian seller was under heavy economic pressure to sell. There is evidence

that a well informed employee of the government had expressed the opinion that the stock was worth in excess of \$700 per share. Only a portion of the depressant factors was attributable to the defendants, and there is indication that in sales between white persons where most of these factors were of minimal importance or were non-existent the price did not materially exceed \$700 per share. There is evidence also that the tribe had reasonable opportunity to purchase when its officials were as well informed concerning the potential value of the stock as anyone, and that it declined to purchase such stock at available prices ranging between \$350

[1093]

and \$700.

8. The court cannot accept the claims of the plaintiffs that the stock should be evaluated at in excess of \$28,000 per share for the purposes of this action or that it will have such value in the materially foreseeable future. Any such valuation is deemed speculative and unrealistic, would give plaintiffs the immediate benefit of all they might hope eventually to realize had there been a rescission of said sales without running any risks, uncertainties or delays of stock retention, would give effect to an erroneous measure of damages, and would be incongruous with the situation of numerous mixed-bloods who have retained their stock or who disposed of it without participation or influence of any acts or failures of the defendants.

9. The court believes that its problem is not merely to determine what an undivided mineral interest ultimately might be worth on the basis of limited known transactions and developing technology and conditions were it developed or realized, or to indulge in similar projections of value, nor to be governed solely by the sales prices received for said stock during the particular period in question. But it does consider that the data in evidence going to both these matters were and are relevant in varying degrees to its basic problem of determining in reasonable approximation as of the time of the plaintiffs' losses the fair value of said stock. That there is no evidence going precisely to such value and that the measures suggested by the respective parties cannot be accepted by the court on the basis submitted by them, should not preclude the court as fact finder in reaching a judgment as to value in view of the totality of circumstances in evidence and the plaintiffs' burden of proof on the issue of damages. The plain-

[1094]

tiffs have failed to convince the court by a preponderance of the evidence that said stock as of material times exceeded in value the sum of \$1500 per share but has convinced the court by what it regards as the preponderance of the evidence that the stock at the time of its sale by the designated plaintiffs as hereinabove found.

10. As the result of settlements made by plaintiffs with other defendants prior to and during trial, the designated plaintiffs have received the following amounts:

Glen Reed	\$ 30.93
Fred Burson	399.87
Letha Wopsock	350.05
Louise A. Case	153.91
Melvin Reed	30.93
Marguerite M. Hendricks	350.05
Joseph Arthur Workman	30.93
Leonard Richard Burson	30.93
Oran F. Curry	30.93
Stewart Eugene Reed	30.93
Richard Henry Curry	350.05
Charles T. Reed	30.93

From the foregoing Findings of Fact the court now makes and enters the following

Conclusions of Law

1. The court has jurisdiction over the persons of the parties and the subject matter of this action by virtue of the Tort Claims Act as to the government and the Securities and Exchange Act of 1934 as to the Bank.

2. The burden of proof was upon the plaintiffs to prove that employees of the United States acting within the scope of their employment and authority were negligent and that such negligence proximately caused or contributed to cause the sales in question.

3. The United States at all times pertinent to the claims of the plaintiffs herein, prior to August 27, 1964, owed a duty to each mixed-blood Ute Indian to exercise reasonable care to

(a) Advise each mixed-blood Ute Indian whose stock

[1095]

it documented for sale of significant material facts or information relating to or bearing upon the value of said stock.

(b) Determine and assure that First Security Bank, selected as trustee, business agent and transfer agent by the United States, and the agents of said Bank, faithfully and fairly discharged their duties toward the mixed-bloods with reference to the sale of said stock.

(c) Require and verify by appropriate evidence, that each mixed-blood Ute Indian who sold his shares of capital stock of Ute Distribution Corporation received the same or a greater price than that at which he had offered the said shares to the Ute Indian Tribe and its members and that all sales be on the same terms as stated in said offers;

(d) Require that each mixed-blood Ute Indian be informed, by physical inspection or otherwise, of the substance of the legends printed on the Ute Distribution Corporation stock certificates;

(e) Fairly protect each mixed-blood Ute Indian against imposition or his own improvidence resulting in the loss or dissipation of his shares of capital stock of Ute Distribution Corporation the sale of which the government documented and implemented.

(f) Discourage each mixed-blood Ute Indian stockholder of Ute Distribution Corporation from the sale, mortgage, pledge or other alienation of his shares of capital stock of Ute Distribution Corporation; and

[1096]

(g) To stress to each mixed-blood Ute Indian stockholder of Ute Distribution Corporation that the Tribal assets of the Ute Indian Tribe, as to which the capital stock of Ute Distribution Corporation represented an interest, were of unknown but substantial value.

4. Notwithstanding the termination of wardship in the broad sense, the Secretary still was under legal duties and responsibilities toward the mixed-bloods at all times prior to August 27, 1964, to use reasonable care in documenting and implementing transfers of stock from the mixed-bloods to see that the statute governing transfers was observed in substance as well as in form, to discourage improvident transfers and to prevent fraud or imposition against the mixed-bloods in connection with transfers as documented and implemented by the Secretary's acts.

5. It rested with Congress to determine when the guardianship relationship between the government and the mixed-bloods ceased and when and how termination should be effected and whether emancipation would at first be complete or only partial and Congress determined that in spite of general termination of guardianship the emancipation of the mixed-bloods was only partial with reference to the transfer of their stock representing undivided interests in tribal lands and minerals. And the court concludes that the government had a continuing duty to use reasonable care in connection with the documentation and implementation of said transfers. The court further concludes that the view of Superintendent Zollar that the government owed to the mixed-bloods only the duty to see that sales were implemented in the form provided

[1097]

by the regulations was too narrow a view of the government's responsibility.

6. The government undertook to perform services and functions pursuant to legislative authority, and otherwise, in the implementation and documentation of transfers of stock by the mixed-bloods and had the duty to exercise reasonable care in connection therewith.

7. The duty of the United States not to lend its assistance to transactions concerning which there was reasonable ground to believe were questionable arose particularly in view of the failure of the system approved by the Secretary to bring to the attention of the mixed-bloods through delivery of their stock certificates the warnings printed thereon.

8. By designating, and working with the bank in connection with the stock owned by the mixed-bloods and by formally documenting and implementing transfers by the mixed-bloods in cooperation with the bank, the government created an aura of responsibility in connection with the transactions involving the sale of Ute Distribution Company stock by the mixed-bloods in the light of which the negligence of the agents and the question of contributory negligence on the part of designated plaintiffs must be weighed and evaluated. In the light of such appearance, the artifices of the bank employees were all the more effective, the exercise of reasonable care on the part of the government agents all the more necessary and the acceptance by the Indians of questionable practices all the more natural.

[1098]

9. The court concludes that the designated plaintiffs have sustained their burden to prove by a preponderance of the evidence that negligence on the part of government employees acting within the scope of their employment in violation of the above mentioned duties proximately caused damages to the designated plaintiffs.

10. That in the execution of the statute governing termination of mixed-bloods and the disposition of their interest in said corporation, the United States failed to use due care to discourage improvident transfers of said stock by the designated plaintiffs and the acquisition of said stock by white persons through imposition and artifice.

11. The burden was upon the government to prove by preponderance of the evidence that the designated plaintiffs were contributorily negligent and that such negligence proximately contributed to cause the damages complained of. The government has failed to sustain the burden of proof on this point except as to Joseph Arthur Workman and Oran F. Curry. The other plaintiffs by reason of their circumstances, lack of information and understanding and dependence upon government information and assistance are not deemed to have been contributorily negligent under the circumstances.

12. The defendants have failed to prove by a preponderance of the evidence that the claims of the designated plaintiffs are barred by any statute of limitations. The court concludes that the claims of the designated plaintiffs against the government are not barred by 20 U.S.C. 2401. Under the circumstances of the case, the defendants were not reasonably placed upon notice of the unlawful conduct of the Bank's employees or of the legal damage they sustained as a

[1099]

result thereof until within two years of the commencement of this action. The related negligence of the government in documenting and implementing sales by the mixed-bloods in view thereof was not reasonably discoverable by the designated plaintiffs, until within two years before the government was made a party herein.

13. The liability of the United States as herein determined arises out of and is based upon negligent acts or omissions of employees of the United States while acting within the scope of their office or employment in discharging the aforesaid duties and said negligence does not fall within any of the exceptions to the Federal Tort Claims Act specified in 28 U.S.C. 2680 and did not involve discretionary functions.

14. At all times pertinent to the claims of the plaintiffs herein, First Security Bank and its agents, including defendants John B. Gale and Verl Haslem, owed a duty to each mixed-blood Ute Indian stockholder of Ute Distribution Corporation the transfer of whose stock it implemented, aided and abetted or otherwise participated in, to

(a) Avoid any conflict of interest with the interest of the mixed-blood Ute Indian stockholders of Ute Distribution Corporation;

(b) Conduct themselves with loyalty and fidelity with respect to the rights and interests of each mixed-blood Ute Indian stockholder of Ute Distribution Corporation;

(c) Discourage each mixed-blood Ute Indian stockholder of Ute Distribution Corporation from the sale, mortgage, pledge or other alienation of his shares of capital stock of Ute Distribution Corporation;

[1100]

(d) Stress to each mixed-blood Ute Indian stockholder of Ute Distribution Corporation that the Tribal assets of the Ute Indian Tribe, as to which the capital stock of Ute Distribution Corporation represented an interest, were of unknown but substantial value;

(e) Fully inform each mixed-blood Ute Indian stockholder of shares of capital stock of Ute Distribution Corporation of any material fact or information known to said Bank or its agents relating to the value, or which could have an influence upon the value, of the capital stock of Ute Distribution Corporation;

(f) Require and verify by appropriate evidence, that each mixed-blood Ute Indian who sold his shares of capital stock of Ute Distribution Corporation received the same or a greater price than that at which he had offered the shares to the Ute Indian Tribe and its members and that all sales be on the same terms as stated in said offers.

(g) Require that each mixed-blood Ute Indian be informed, by physical inspection or otherwise, of the substance of the legends printed on the Ute Distribution Corporation stock certificates;

(h) Verify the regularity of each transfer of Ute Distribution Corporation stock by a mixed-blood Ute Indian as to which the Bank guaranteed signature.

15. The Bank occupied toward the mixed-blood Indians not coming within the express provisions of the trust if not the position of a fiduciary in the strict sense at least a duty to deal with and for the mixed-bloods in good faith and lawfully and without purpose of overreaching or imposition.

[1101]

16. The defendants Gale and Haslem directly and indirectly by the use of the means and instrumentalities of Interstate Commerce and of the mails in connection with the purchase of shares of the capital stock of Ute Distribution Corporation from the designated plaintiffs employed a device, scheme or artifice to defraud the said plaintiffs, omitted to state material facts necessary in order to make statements which they made in the light of the circumstances under which they were made not misleading to the plaintiffs and used and employed manipulative and deceptive devices and contrivances and aided other persons in doing so, in violation of Section 10 of the Securities and Exchange Act of 1934 and Rule 10b-5 promulgated pursuant to said section. The Bank became and was responsible for the unlawful acquisitions of the stock of the designated plaintiffs thereby.

17. Within the doctrine of apparent authority as reflected in Westinghouse Credit Corporation v. Green, 384 F.2d 298 (10th Cir. 1967), and by reason of the creation of an appearance of responsibility and of ratification, the bank became and is liable for the unlawful acts of its employees Gale and Haslem in participating in the acquisition and purchase of the stock from the designated plaintiffs.

18. The designated plaintiffs were not and are not in pari delicto with defendants Gale and Haslem and are not barred from recovery for any such reason.

19. The claims of the designated plaintiffs against the Bank are not barred by any statute of limitations. The limitation provision of the Securities Act of 1933, 15 U.S.C.

[1102]

Section 77(m) does not apply, but rather by analogy the three year statute of limitations governing actions for fraud under the state statute applies.

20. First Security Bank through its agents, Gale and Haslem, wilfully, wantonly and knowingly breached and failed to discharge duties owed to the designated plaintiffs herein and

said plaintiffs were thereby deprived of their said stock for an inadequate consideration.

21. The United States mails and other instrumentalities of interstate commerce were regularly employed by First Security Bank and its agents, including the defendants John B. Gale and Verl Haslem, in connection with the sale by and the purchase from the said plaintiffs of a security, viz., shares of capital stock of Ute Distribution Corporation.

22. The acts and failure of Gale and Haslem, in violation of the proscriptions of Rule 10b-5, proximately caused the loss of the designated plaintiffs' stock for an inadequate consideration.

23. The reasonable and fair value of a share of capital stock of Ute Distribution Corporation at the time of its sale by the designated plaintiffs was \$1500 per share.

24. Except as hereafter provided, each of the designated plaintiffs is entitled to judgment against each defendant in the amount of \$1500 multiplied by the number of shares of said stock sold by each plaintiff, less the fair value of the consideration received by such plaintiff therefor and less the settlements received from other parties as

[1103]

herein found, plus plaintiffs' costs and disbursements herein. Judgment shall not be entered in favor of the said Curry and Workman against the government, nor shall it be entitled against the government as to any sale the commitment of which occurred after August 27, 1964.

25. The court should reserve jurisdiction to adjudicate the claims of plaintiffs other than the designated plaintiffs with due regard to the pertinent factual and legal determinations herein, or as the court may consider proper, and to enter final judgment with respect to all claims.

26. The court should certify the interlocutory judgment concerning the designated plaintiffs for recommended interlocutory appeal, since such a course would be likely to advance and expedite the final determination of this case.

Counsel for the plaintiffs shall within fifteen days prepare, serve and file a proposed form of judgment consistent with these conclusions, to be settled at the court's first motion day following said period.

Dated this 18th day of April, 1968.

[1104]

PETITION AND COMPLAINT IN AUC

Plaintiff complains of defendant and alleges:

1.

Jurisdiction of this Court exists over the subject of this cause and over the defendant by virtue of Title 25, U.S.C., Section 345, and Title 28, U.S.C., Section 1399 and 2409, and the provisions of Public Law 83-671 (25 U.S.C. Sec. 677a, et seq.).

2.

By virtue of the so-called "Spanish Forks' Treaty" (see the Act of February 23, 1864, 13 Stat 63), the Executive Order of October 3, 1861 (1 Kappler 900), the Act of May 5, 1864 (13 Stat 63), and the Act of June 15, 1880 (21 Stat 199), together with various other acts of Congress dealing with the Ute Indians of the Uintah and Ouray Reservation, Utah, defendants acquired title to a vast expanse of lands and the minerals thereof situated in the Uintah Basin, Utah, to be held by defendant in trust for the Indians of said Reservation.

[1]

3.

In 1954, the Congress enacted said Public Law 671 declaring all members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, possessed of one-half Indian blood, or less, consisting of 490 Ute Indians, or approximately 27 percent of the then-constituted Ute Indian Tribe to be "mixed-blood" members of said Tribe, and directing termination of their status as Indians and directing conveyance to each "mixed-blood" of his pro rata share of the Tribal assets.

4.

Plaintiff is an unincorporated association composed of all "mixed-bloods" formed pursuant to Section 6 of Public Law 671 (25 U.S.C. Sec. 677e) by the Secretary of the Interior of the United States on or before the 5th day of April, 1956.

5.

By reason of the provisions of Section 16 of Public Law 671 (25 U.S.C. Sec. 677o), the Secretary of the Interior was "directed [by Congress] to immediately transfer to him [the "mixed-blood"] unrestricted control of all other property held in trust for such mixed-blood member by the United States, and shall further remove all restrictions on the sale or encumbrance of trust or restricted property owned by such member of the tribe. . ." Under and by virtue of said Act of Congress, the individual 490 members of plaintiff association were granted and claim to be entitled to an individual, undivided pro rata share of 27.1686 per centum of approximately 1,200,000 acres of mineral lands situated in the Uintah Basin of the State of Utah, subject only to the right of plaintiff association to manage said property jointly with the Tribal Business Committee of the Ute Indian Tribe, and plaintiff association and its individual members are now unlawfully denied or excluded from said lands and the management thereof by defendant.

[2]

WHEREFORE, plaintiff prays judgment for an order of this Court distributing 27.1686 percent of the mineral estate underlying the Uintah and Ouray Reserv-

ation, Utah, to the individual "mixed-blood" members of the plaintiff, pro rata, and determining that plaintiff association is entitled to manage said property, jointly with the Ute Tribal Business Committee, and partitioning the said mineral estate; for plaintiffs' costs and disbursements herein, and for such other and further relief as may appear equitable, proper, or just in the premises.

Dated this 25th day of April, 1968.

Adam M. Duncan
Parker M. Nielson

Filed April 25, 1968

Motion To Reopen

Come now the defendants, First Security Bank of Utah, N.A., John B. Gale and Verl Haslem, and move that the Court reopen the above entitled cause and continue the trial for the reception of evidence concerning sale of Ute Distribution Corporation stock between white men for the purpose of further demonstrating the reasonable value of the stock and on the grounds that such additional evidence will contribute to the interests of justice.

Dated this 10th day of May, 1968.

Ray, Quinney & Nebeker

By Marvin J. Bertoch .
Attorneys for Defendants
First Security Bank of Utah,
John B. Gale and Verl Haslem

Filed May 10, 1968

[1202]

Affidavit

State Of Utah County of Salt Lake ss.

Marvin J. Bertoch, being first duly sworn on oath, deposes and says:

1. That he is one of the attorneys for the defendants, First Security Bank of Utah, John B. Gale and Verl Haslem in the above entitled cause.

2. The record reveals evidence of sales and purchases of 149 shares of Ute Distribution Corporation stock made in 1963 and 1964 between twenty-six different white men at an average price of \$463.85 per share. Those sales represented transactions where there was a reasonable time for a purchaser to be found, able, ready and willing buyers and sellers who were under no compulsion either to buy or to sell, but with reasonable knowledge of the then existing circumstances and situation of the stock and related property, and the property interest of the stock represented. Those prices were evidence of reasonable value.

[1203]

3. The Court did not include those specific facts in its Findings of Fact, but limited its findings on the subject of sales between white men to the following appearing in Finding No. 6, page 104, of the Findings of Fact and Conclusions of Law:

"The evidence also indicates that during such period (1964 and 1965) stock was being purchased and sold between white persons for prices of approximately \$500 to \$700 per share. What the stock has sold for since the institution of this action is not revealed meaningfully by the evidence, although presumably subsequent to the institution of the action there would be reflected in sales prices at least to a degree the revelations and contentions incident to this litigation." Inasmuch as the Court was not sufficiently persuaded by the evidence to set forth the specific facts adduced concerning market value as demonstrated by sales between white men; and inasmuch as the Court very properly suggested that evidence of sales subsequent to the institution of the action would also be competent, relevant and helpfully probative, defendants believe that reopening for the purpose of adducing the substantial additional evidence available concerning the market price as reflected in sales between white men would contribute to the accomplishment of a fair trial and the interests of justice.

4. Evidence on this subject now appears to be especially vital to the Court's findings prior to appeal, inasmuch as plaintiffs' counsel are now attempting to induce all affiliated Utes to bring action against First Security Bank of Utah, N.A., as evidenced by the attached letter signed by plaintiffs' counsel, which the affiant is informed and believes was sent to all of the 490 more or less mixed-blood members of the affiliated Ute organization.

5. Attached hereto is a list of white witnesses which the defendants would propose to call to testify with regard to the

[1204]

price at which they made sales to and purchases from white men.

Marvin J. Bertoch

Filed May 19, 1968

[1205]

Re: Anita Reyos and others vs. United States of America,
John B. Gale, Verl Haslem, First Security Bank Of Utah

Judge Christensen entered 116 pages of Findings of Fact and Conclusions of Law in this case on April 18, 1968. He found each and every defendant liable; he denied all of their defenses. He found that the stock of Ute Distribution Corporation was worth \$1,500 in 1963-64, without giving any value to the underlying shale. Thus, if a person sold 10 shares and received \$4,000, he is entitled to a judgment of \$11,000. The total judgment will be approximately \$1,100,000.

The United States and probably the other defendants are certain to appeal. We feel confident that the Court of Appeals will not reverse the Findings of Fact and Conclusions of Law of Judge Christensen, except, (and on this we will probably cross appeal) the failure to include the value of the shale in the valuation of the UDC stock. The appeal will likely require a number of months, perhaps a year, before we can obtain cash for distribution, and before then, each plaintiff will have to come in, testify as to the number of shares he (or she) sold, to whom, the circumstances, and how much he (or she) received. So, don't go out and spend the money just yet. But we did want to let you know that the case is won, and that our position has been completely vindicated.

The Findings and Conclusions are of interest to all Affiliated Utes because they confirm certain of our contentions which will be material to future claims we may assert on behalf of all of you.

We are gratified by the Court's Findings and Conclusions. This represents the culmination of nearly 4 years of work and a great deal of loyalty on the part of our plaintiffs. We look forward to future successes on behalf of all of you.

April 20, 1968

Adam M. Duncan
Parker M. Nielson

[1206]

Witnesses Defendants Propose To Call To Testify
With Regard To Market Value Of Stock

Clyde R. Murray
Dick E. Bastian
R. Earl Dillman
Bernard Lucero
Acel Haslem
Marie Stanbery
Mills Tooke
Raymond T. Duncan
Ralph Healey, Jr.
John D. McAfee
John B. Gale
John D. Chasel
G. Richard Murray
Alvin G. Bowden
Myron R. Mower
Verl Haslem
R. V. Larson
President, Basin Loans Inc.
Guy E. Davis
Leon B. Mapper
Mary Moore Gayle
Farrell D. Anderson
President, The State Bank of Provo
D. Blaine Hadley
W. Elmer Hadley
Howard C. Maycock
President, B.L.I. Trailer Sales

Neuman C. Petty
Thomas M. Hall, M.D.
Richard Lee Tooke
J. Grant Nielson
William J. Cayias
Elmo G. Matthews
Niven Busch
Jay C. Gates
Lynn Labrum
W. Grant Hansen
Robert L. Monson
Bernice I. Vannoy
G. C. Morris
Harry Zoller
President, Interstate Resources Inc.
Robert L. Hill
Jerry B. Christensen
L. H. Holley

May 20, 1968

MR. BERTOCH: Would the Court desire to take up a motion to reopen at this time?

THE COURT: Yes.

MR. KLEMM: Your Honor, may the record show at this time that the Government joins in the motion to reopen that has been made here by the bank.

THE COURT: It may.

MR. BERTOCH: Your Honor, I can be brief on this. In the Court's findings of fact, I think it's on page 104, the Court indicated, and I think quite properly, that it would have been helpful to the Court if there had been evidence presented relative to the market value and the prices at which stock was sold after the time of the commencement of the lawsuit, and particularly sales prices between white individuals; and pursuant to that suggestion, which appears in the Court's findings of fact--

THE COURT: It was a comment, it wasn't a suggestion, because the parties had full opportunity to introduce all the evidence. It simply was a comment on the lack of evidence that appears.

[1125]

MR. BERTOCH: I realize that, your Honor, and I think there was a lack of evidence. We believe that inasmuch as the only evidence that was presented on market value as between white individuals was presented by the defendants, and there was no evidence to deny it or counter it, we thought enough evidence had been presented; but we feel now, after reading the findings, that the Court would be assisted and justice would be served if there were more evidence presented.

[1126]

* * * *

MR. BERTOCH: Your Honor will recall that First Security Bank, Gale, and Haslem, requested to reopen the case for the purpose of presenting some evidence with respect to prices at

which this stock was sold, bought and sold, between white men after the commencement of the trial, or after

[1138]

January 1, 1965.

There was considerable evidence presented, as the Court noted in the findings, of the sales prices, the market price between white men, involving sales between--or, in 1963 and 1964.

I presented in my motion the names of, I think, 45 whites that I would like to call or whose depositions I would like to take where they were out of the state, so that that could be added to the record, with respect to market price or sales price of shares of stock exchanged between white men after July 1, 1965.

The Court said that the Court would consider the motion if I was able to present some affidavits or statements with respect to what these people would testify to. I've been able to get and have submitted to the Court eleven affidavits in which white men have stated at what prices they sold the shares to other white men, and three statements that are not notarized.

Now, many of these 34 people that I've named are strangers to me, and I'm a stranger to them; and they just say, "It's none of your business."

Of course, the only way I could get them to tell is bring them into court and have them testify or take their depositions. These eleven affidavits and three statements that I have presented indicate that sales were made after

[1139]

January 1, 1965, by white men to other white men at prices ranging from \$200 to \$700 a share.

About 91 per cent of those sales were between \$500 and \$650.

We believe that the testimony of the other--we believe there are fifty or sixty other white men who have made statements to white men--will indicate that the prices are in that same area, \$500, \$600, \$650.

We believe that this is related to a vital issue in connection with this case. We do not see how the activities of Gale and Haslem could have depressed or chilled the prices of the sales, the market price, after January 1, 1965, or before, for that matter; and that since these cases involve what may mean more than a million dollars by way of judgments, that the Court would desire to have all the evidence possible with regard to the critical issue of market price and its bearing on the fair and reasonable value of these shares of stock.

For that reason we request the Court reopen, so that I could bring in these witnesses, or as many as are within the state, and take depositions of those outside the state. I believe the questioning could be very brief, and only on that one point, and we could put thirty or forty witnesses on in a day.

* * * * *

MOTION TO DISMISS IN AUC

Pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, the defendant, THE UNITED STATES OF AMERICA, acting by and through H. RALPH KLEMM, Assistant United States Attorney for the District of Utah, moves the Court to dismiss the Complaint heretofore filed by the plaintiffs in this case on the following grounds:

1. The Court lacks jurisdiction over the subject matter of the action;
2. The Complaint fails to state a claim upon which relief can be granted; and
3. The plaintiffs have failed to join certain indispensable parties to this action.

DATED this 17th day of June, 1968.

H. Ralph Klemm

Filed June 24, 1968

TRANSCRIPT OF PROCEEDINGS IN AUC

July 8, 1968

THE CLERK: C 82-68, Affiliated Ute Citizens v. United States of America.

MR. KLEMM: Your Honor, this is the government's motion to dismiss this case.

THE COURT: All right.

MR. KLEMM: I believe there are two other motions, but

THE COURT: It seems to me that this motion to dismiss could appropriately be considered first.

MR. KLEMM: If it please the Court, plaintiffs in this case have sued the United States to obtain title to twenty-seven percent of the mineral underlying the Uintah and Ouray Reservation and determining that the plaintiff association is entitled to manage said property jointly with the Ute Tribal Business Committee and partitioning the said mineral estate.

In essence, your Honor, just briefly, they've alleged that the United States holds title to the land and to the minerals in trust for the tribal lands.

We hold it, of course, for the benefit of the tribe, and it's our position that we hold it for the benefit of the Ute Distribution Corporation, and not for the benefit of each individual indian.

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Now, this is an action to divest the United States of title to 27 percent of this property that's held in trust. In other words, it's an action to obtain, to determine, or to quiet title to lands owned by the United States.

Such suits cannot be brought without the consent of the United States, and this principle applies to lands held in trust, even when brought by a group of Indians who share in the beneficial use.

We've cited cases in support of the this [sic.] in our brief, and we'll not repeat those cases at this time.

Now, we are confident that the counsel for the plaintiffs will allege and argue that the United States has given its consent to such suit in Section 345 of Title 25, which authorizes suits against the Government. But this particular statute by its clear wording pertains to only suits to obtain allotments of land. And the only relief there can be given by the Court is to cause issuance of allotments when authorized by Congress.

Now, in this particular case, the United States holds the land in trust for the Tribe on one hand and for the Ute Distribution Corporation on the other hand.

We have been through this in the Reyes case, your Honor, and we've held a trial on this, and I'm sure the evidence is before the Court, although not in this

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matter. But—

THE COURT: Don't I take judicial notice of the statutory and regulatory framework of the question?

MR. KLEMM: I think the Court does take judicial notice.

THE COURT: Is there anything else that would be necessary in order to rule one way or the other?

MR. KLEMM: No, your Honor.

THE COURT: On a point of law?

MR. KLEMM: I believe that it is a question of law. And that the law is stated in the act itself, found in 25 U.S. Code 677, "a" through "aa."

THE COURT: I gathered from comments by Mr. Boyden as amicus in another connection that there was a feeling that the judgment in Reyes foreclosed or decided this question. Do you have that feeling that I have already ruled either that there was a right to have an allocation or participation, or that indeed the property, and particularly mineral rights, were held by the Government in trust for the individual members of the Tribe, and the mixed bloods?

MR. KLEMM: No, your Honor. We do not take that position. We don't think the Court held that—

THE COURT: I didn't think that I had come to grips with that problem, or even decided in form or

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substance. Maybe I misunderstood Mr. Boyden.

MR. KLEMM: I didn't read the findings of fact and conclusions of law in that regard at all, your Honor.

THE COURT: All right.

MR. KLEMM: Counsel will undoubtedly argue that Section 345 would give them jurisdiction here. However, Section 345 clearly pertains to allotments to individual Indians. I think the Courts have so decided in the cases cited.

THE COURT: What's the title under "Indians"?

MR. KLEMM: Title 25.

THE COURT: Twenty-five.

MR. KLEMM: Section 345.

THE COURT: Would you mind getting that, Miss Godbe (speaking to the law clerk)?

Well, perhaps we should hear from them, rather than anticipate.

MR. KLEMM: I might say just this. Counsel have cited Sections 2409 and 1399 of Title 28 of the United States Code in support of the jurisdiction of the Court. These sections obviously apply only to partitions of land where the United States is a joint tenant. In this case the Government is not a joint tenant. The Government is the sole owner. It owns fee title to all of the land involved and does not own any part of the beneficial interest

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of the Indians.

Now, we've also alleged in addition to the allegation in our motion that the Court lacks jurisdiction of the subject matter. We have also alleged that certain indispensable parties have not been included here.

Now, plaintiffs ask here that the Court make a determination that the plaintiff association is entitled to manage said property jointly with the Ute Tribal Business Committee.

It seems to us that if the Court is to make that type of a ruling, then the Ute Tribal Business Committee should be here to defend its interests, and, in addition, the Ute Distribution Corporation, which now manages the property jointly with the Ute Tribal Business Committee, should also be here to determine their rights in connection with the management of these assets.

They also asked that the mineral estate be partitioned. Certainly the Tribe, the Ute Indian Tribe, should be here as well as the UDC, which now purports to be the organization that issues stock for and in connection with these interests.

So it would seem that they should be in. However, of course, as the Court knows, they have made a motion to intervene, and that probably would take out the objections we would have in that regard, your Honor, because if the

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intervention were granted, they would be in, and their rights would be protected, and the Court would be able to determine their rights in the same action. But that is our position.

We state that the Act of 1951, which is known as Public Law 671, does not grant the jurisdiction to the Court, does not waive sovereign immunity in this case.

For this reason the Court lacks jurisdiction and should dismiss the action.

MR. DUNCAN: Initially, your Honor, we'll say that the *Reyes* case, this question did not arise, was not disposed of, even tangentially.

The second section that we are particularly concerned about today as to whether or not the Government has waived immunity is whether or not this is a proper forum as the general Indian law, 25 U.S.C., or C.A. 345. And counsel for the United States reads it as he wishes to read it.

Let me, your Honor, read the portion that we think is right on the button.

"All persons who are in whole or in part of Indian blood or descent who claim to have been unlawfully denied or excluded from—"

THE COURT: Now, where are—

MR. DUNCAN: I'm skipping, to drop out the portions

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relating to allotments.

THE COURT: I see.

MR. DUNCAN: Deleting those, it's right on the button. On the top of the next page.

"—excluded from any allotment or any parcel of land to which they claim to claim to be lawfully entitled by virtue of any act of Congress."

The act of Congress we're talking about is Public Law 671, and particularly 6770, which says that the Secretary shall immediately give them their interests.

So there is our act of Congress. And this is our statute. They do claim that they're unlawfully denied or excluded. And so we think we have a judicially sound case at that point.

The act goes on to talk about the United States as a party defendant.

Now, the United States has lightly dismissed the other two sections we maintain give us jurisdiction and waiver of immunity.

And the question will turn on a very simple issue: Whether or not the United States, owning, as they do, title, but claiming a part of the beneficial interests, are in fact joint tenants.

If they are, both sections—

THE COURT: I didn't get that last statement.

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MR. DUNCAN: The section we've just talked about, we think, is specific and on point. The other two sections we rely on, 1399 and 2409, both of these will turn on the question — they both constitute jurisdictional statutes—

THE COURT: How do they read?

MR. DUNCAN: They're both short and both use the same words.
1399.

"Any civil action by any tenant in common or joint tenant for the partition of lands where the United States is one of the tenants in common or joint tenants may be brought only in the—"

And so on. Well, the United States owns the legal title. They don't claim any interest in the beneficial title. Are they then tenants in common, or joint tenants? If they are, this confers jurisdiction also.

And the other section, 2409, we have exactly the same question:

"Any civil action by any tenant in common or joint tenant owning an undivided interest in lands where the United States is one of such tenants in common or joint tenants against the United States alone or against—"

And so on.

So the dispositive question as to these two

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sections will be, when the United States owns legal title, but claims no interest beneficially, are they "tenants in common" or "joint tenants"?

And none of the cases cited by the United States disposes of that.

Now, it is our position that Section 677o of Public Law 671 did just that—that it gave the title to the mixed-bloods to 27 percent, and at this point, mixed-bloods or Affiliated Utes became a tenant in common with the United States.

So we have three jurisdictional statutes. Two of them turn on that very thin question of whether or not Public Law 673, Section 677o, creates a joint or common tenancy.

Now, as to the intervention—

THE COURT: Well, I suppose the burden is upon the interveners on that point.

MR. DUNCAN: On intervention, your Honor, we actually would like to have this disposed of in one case; that is, the United States' interest be tried. And Mr. Morris's client, UDC — he's not here today, but he filed exactly the same and evidently copied Mr. Boyden's pleading.

If they show us why they have an interest in the land — in other words, some showing. Furthermore, it's premature. If Mr. Klemm's argument prevails, we're out of

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Court. But absent that, and absent the problem of whether or not UDC and the Tribe coming in might divest the Court of the jurisdiction we talked about, the three sections we talked about relate only to the United States. And if by some hook or crook these two coming in would divest this Court of jurisdiction, we would oppose their coming, if that's the purpose. And it seems to be, because the first part of their proposed answer challenges the jurisdiction of this Court, not only as to the United States, but as to the interveners. They are coming in saying they have no business being there.

THE COURT: How could their intervention or joinder destroy the jurisdiction of the Court? You are not relying upon diversity.

MR. DUNCAN: I think it's a federal question.

THE COURT: Yes. A federal jurisdiction. And it wouldn't alter the amount in controversy.

MR. DUNCAN: No, sir.

THE COURT: I don't quite follow you.

MR. DUNCAN: I haven't thought it through. But if, for example — I asked Mr. Klemm earlier today. He hasn't had time to think about it. If it would be stipulated among counsel —

THE COURT: Stipulation wouldn't do any good, because you either have jurisdiction, or no jurisdiction.

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MR. DUNCAN: With that express concern, we have — although we think it's a duty of them to show why, I think the amended rule on intervention imposes that duty, and the comments of the advisory committee indicate, and one of their concerns is — they say, "Look at Rule 19 when you're talking about intervention."

THE COURT: But actually, the point germane to your present appearance is whether they are indispensable parties, notwithstanding how they may be characterized under the amendment to the rule. Whether the case reasonably can proceed on the theory that you are pressing it, in their absence.

MR. DUNCAN: We think it can, of course. We think the United States — in effect, what they say is the United States is not adequately representing their interests.

THE COURT: I don't think so. You're going back to intervention. That matter isn't before me right now. You're confronted with a motion to dismiss. One of the grounds of a motion to dismiss is that the parties essential to a meaningful determination aren't before the Court.

MR. DUNCAN: Yes, sir. And we think that's not so.

THE COURT: Could I really determine that this

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property should be taken entirely away from any administrative responsibility of the Ute Distribution Corporation and should be partitioned in effect by not having a unified operation of it, irrespective of what the views of the Tribe might be, without at least giving them a chance to be heard?

MR. DUNCAN: To answer your question, yes, I think you could. I think you could. Now, whether it would be more desirable to have them all before the Court — obviously, they wouldn't be bound.

THE COURT: Why wouldn't they be bound?

MR. DUNCAN: UDC doesn't claim they own the land.

THE COURT: No, but they claim they have a right to administer these funds. And that was the very purpose for which the corporation was organized. And you claim that they had the right — in the *Reyes* case — they had the right to administer it and had certain responsibilities in connection with the Secretary.

Now, to say that — you say in effect that that doesn't make a bit of difference, that actually these Ute Indians are — that is, the mixed-bloods — have a right to immediate distribution, notwithstanding any rights heretofore relied upon in administration, notwithstanding the value of this stock, which has been placed in the hands of the Indians through the Ute Distribution Company, it just seems

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inconceivable to me that the Court could make a meaningful determination without affecting the position of the Ute Distribution Company, as well as the Ute Tribe.

MR. DUNCAN: We've cited the Court to a Tenth Circuit case we think

is very much in point. We can meet this problem simply by our stipulating they both may come in.

In which case, we would waive our objection, except as to the representation of the Tribe. They both moved, and we stipulate they may be admitted. We think the Court could dispose of this case — as in the Archer case —

THE COURT: What is the—

MR. DUNCAN: 268 P2d 687.

THE COURT: Do you think that solves this question of indispensable parties?

MR. DUNCAN: Yes. Maybe I can ask Mr. Nielson —

THE COURT: Did that turn upon the amended rule with regard to the—

MR. DUNCAN: No.

THE COURT: With regard to essential parties?

MR. DUNCAN: No.

THE COURT: In the first place, the determination of the Utah Supreme Court has no controlling effect upon the interpretation of federal

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rules, which is a federal question. In the next place, rules as to indispensable parties have been changed a good deal by the new amendment to the rules.

MR. DUNCAN: With that in mind, with everyone here, we'd stipulate they may come in. Is this the United States, except with the limitation into the employment of counsel by the tribe? And we've submitted that to the Court. We have very little more to say.

THE COURT: Well, to clear the air on that, I've set a hearing for the 16th, where we may have to come to grips with that matter. And I would certainly prefer to—not to consider the general problem piecemeal. Mr. Boyden would agree that perhaps we should, unless we necessarily reach the partition in intervention, we should discuss the matters in the context of these other cases?

MR. BOYDEN: I see no objection, your Honor, to having them all done at once.

THE COURT: I think so. And it may not be essential to meet it in this case, depending upon the ruling on the motion; but at least we have to come to grips with it in one or more of these other cases, and with the question of representation in mind, I would much prefer taking the matter up on the 16th, if that's agreeable.

MR. DUNCAN: That's fine, sir.

THE COURT: Now, let's consider the merits of this

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motion, apart from the question of indispensable parties.

Mr. Boyden, I hesitate to ask you now to express an opinion, although I would welcome your representation; but since there is a claim that there is a conflict of interest, I wouldn't want you to be in a position of espousing a cause which might be in conflict with the cause of your former clients until that question of conflict

of interest is resolved. I would assume that you might feel the same way. I hate to forego your view on this, but I believe I shouldn't put you in that position.

MR. BOYDEN: Thank you.

THE COURT: All right. Does anyone else want to be heard on this question, either as an amicus, or otherwise, on the question of whether the claim should be dismissed as a matter of law, apart from the question of indispensable parties and the question of representation?

MR. KLEMM: Your Honor, I would ask the Court to permit me to file a very short supplemental brief in the support of our motion to dismiss, pertaining to the use of the word "allotment", in Section 345.

THE COURT: State the substance of it, so counsel—

MR. DUNCAN: We have no objection to its filing.

THE COURT: It may be filed. But I would appreciate your stating the substance of it now, so I can have it in mind.

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MR. KLEMM: I would like the record to show that I have given a copy of the supplemental brief to each of the counsel and to the Court in this case.

THE COURT: Very good.

MR. KLEMM: The word "allotment" in Indian law is really a word of art. It specifically refers to an interest in land being granted to an individual Indian by a trust patent, under the General Allotment Act of February 8, 1878, which is found in 25 U.S. Code 331.

Now, a trust patent was issued to each allottee under that act stating that the United States held the property in trust for the individual Indian.

Now, under that act, they would allot the land to the individual Indian and then hold it in trust for 25 years. At the end of the 25 years, they would give that Indian a fee title to that land.

Now, under this General Allotment Act, this word "allotment" became a word of art.

Now, the ownership of the mineral interest that is the subject of the present litigation is in the United States held in trust for the Ute Indian Tribe and the UDC, not for any individual Indian; and, therefore, this land is not allotted as the term is used in Indian law and cannot be allotted except under the allotment statutes of the United States.

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And it's our position that the statute which terminated the mixed-bloods, which has been the subject of these cases, was not an allotment law in that nature.

THE COURT: I have your position.

MR. KLEMM: And this is the position basically. The Indians organized under a constitution in 1934 which declared that all unallotted lands and all lands acquired thereafter by the Tribe or by the United States in trust for the tribe shall be held as tribal land and shall not be allotted to the individual Indians.

THE COURT: I have your position. Since that wasn't brought up in the principal argument, do you care to respond briefly?

MR. NIELSON: I would like to respond very briefly to that, your Honor. I would like to say first of all, with respect to the memoranda and the supplemental memoranda, of course, which we haven't yet had an opportunity to examine beyond Mr. Klemm's comments here, there hasn't been much comment made about these cases.

I would like to say this about them, though. Mr. Klemm has cited a number of cases here, and I think I recognize most of these cases as being cases that hold for the proposition that no individual Indian has the right pursuant to this jurisdictional statute which we're talking about here to claim any interest in any tribal lands on the

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theory that the tribal lands after all are tribal lands. They belong to the Indians in common, and they are not the individual lands of an Indian, even though he's a member of the tribe. We don't have any fight with that proposition at all.

But I think it's worthwhile pointing out that Public Law 671 made a profound difference in that situation, because Public Law 671 specifically declares that as to these Indians who are being terminated, the Affiliated Utes that we're talking about here, they were to receive their individual interest in the tribal assets, and that included lands.

So now, the cases that Mr. Klemm is talking about are inapplicable. We're not talking about tribal lands any more. We're talking about the individual property of an Indian, and I think that's what the statute is talking about here when it says that the Indian can bring a lawsuit for this allotment. But also it says that he can bring a lawsuit for lands that he's been excluded from as to which he claims a right by reason of an act of Congress. And that's precisely what we're talking about.

I, therefore, submit that this line of authorities that Mr. Klemm refers to, while they are admittedly good authorities, they're just not applicable to the problem before the Court.

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THE COURT: Thank you, sir. I am convinced, gentlemen, that this Court does not have jurisdiction in the case based upon the pleadings. I do not think that claim does, within the contemplation of Section 345 of Title 25, United States Code, involve claims of unlawful deprivation or exclusion from any allotment or parcel of land to which they claim to be lawfully entitled by virtue of any act of Congress.

I do not believe that legislation subsequent to the interpretations covered by the supplemental memorandum of the Government significantly changes the application or nonapplication of the section mentioned, with reference to the claims made in the complaint before me.

I am further convinced that, apart from the question of jurisdiction, no claim is alleged on the face of the complaint sufficient to authorize the relief sought, or any relief.

There are some conceptual difficulties in being influenced by prior experiences, when a Court is confronted with problems; but I suppose a judge should

bring to his office the sum total of his knowledge of the law, little or great, and his experiences in connection with the application of law.

The gravamen, it seems to me, of plaintiff's position is that there is in effect an inactive or passive

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or naked trust existing whereby the Government holds the title to lands or mineral interests or other interests in lands for the benefit of the mixed floods [sic.] in trust. That, as I say, is the basic position.

There is, of course, the further argument that beyond the legal effect of such a situation, the act of Congress contemplates this division or application, if you please, which is sought in this case. On the latter argument, I believe it manifest that Congress did not intend this result which would bypass the administration of the Ute Distribution Company, the statutory framework which was urged by counsel for the present plaintiffs in the *Reynos* case, as establishing duties by the Secretary in contemplation of a course of administrative action which would be repugnant to the present position of the plaintiffs in this case. And I think that the very least that can be said on the question of the presumed intent by Congress that pursuant to at least some statutory authority, a system of the administration of these undistributable mineral interests has been established under the eyes of Congress.

The Secretary has participated, as I held in the *Reynos* case, in the administration of that case. The Ute Distribution Company has operated under it, and under a certain construction. The Tribe has operated under the

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certain construction involving this administrative process, with the Government holding the title to mineral interests:

Congress has done nothing to change the statutory system after all of that has been accomplished, under the eyes of congress.

And to say that all of that is done, and our *Reynos* lawsuit was premised upon a false assumption, I regard as quite inconsistent with the idea that Congress dictated a different course, I think is to say something that I can't approve.

That doesn't reach, however, as I indicated, what I regarded as the more basic problem of the Government holding title in trust for beneficiaries.

It touches upon the problem in a way, because, of course, if it was contemplated by Congress that there would be certain administrative processes based upon the retention of the title in trust, it would be incongruous to say that the execution of the trust immediately as sought in this complaint could reasonably thwart that administrative management of the trust interest as set up through the Ute Distribution Corporation and the plan of the administration and distribution of mineral interests.

So there is a nexus in the problem.

But assuming that we dismiss that and say, "Here is only a naked trust," under which the Government holds

the title for the benefit of the Affiliated Utes or the individual mixed-bloods, or someone else, query: Can suit be brought, assuming even jurisdiction, for an execution of a trust by the Court?

I advert again to my own experience in that field. Our firm many years ago represented the Strawberry Water Users Association. Unlike any other statutory setup governing particularly reclamation projects that I know, there was almost a naked legal trust established in favor of the Strawberry Water Users Association, in those Government lands covered by the trust.

Subsequent reclamation acts have mentioned that the property is sold in trust for the purposes of administration by the Government and for purposes of administering the recreational facilities in connection with the project and with many other qualifications;

But the Strawberry Water Users statute simply says in terms that that property is held for the Strawberry Water Users Association in trust.

We learn a lot in intervening years, but I've had no reason to question that on your position, which was considered at one time that we could simply say to the Government: "Convey this land to us, and tell Congress, 'Convey this land to us, this is a naked trust that we want executed,'" I don't think that that was well taken,

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because Congress can hold land in trust and can dispose of it as it sees fit, with recognition of the beneficial interest, but administratively can dispose of it when it wants to.

And while the beneficiaries have very real rights, our particular problems at the time were whether we were entitled to the proceeds from the oil and mineral rights on the Strawberry project, whether we had an interest in the recreation rights there, and various other interests as beneficial owners. It was determined we couldn't question the administration of the Government; but we claimed that we were entitled to the benefits subject to that administration. I think it was sound then, I think it's sound still.

And the rights of the Strawberry Water Users Association in the proceeds of the minerals, and the recreation rights, the grazing rights, and all other rights, subject to the retention of title in the Government until Congress otherwise determined, were vindicated and, as far as I know now, still stand.

I can see no significant difference, really—

MR. DUNCAN: May we respond to that one point, because I think it's dispositive, and I think we're not communicating out theory to the Court.

THE COURT: All right. If I misapprehend your

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theory, I'd be glad to have it. I don't want an argument. I just want simply a statement of your position.

MR. DUNCAN: Our position is that the United States does not hold this as trustee, that the United States unlawfully holds it, because Congress said in 1954, "Give it to them within ten years." It didn't talk about holding it in trust. They

had a duty to administer it during those ten years. Our position in this case is wholly consistent with *Reynos*.

All we ask the Court to do before dismissing on that ground — that the argument made by the United States—we're not talking about a trust. We've said it. But we don't plead it. What we're talking about is lands that Congress said, "Now, give it to the mixed-bloods." And the Secretary hasn't done it.

THE COURT: Give it to the individual mixed-bloods?

MR. DUNCAN: Yes.

THE COURT: Can you read that statute on which you rely, the citation? I had understood you to make the very argument that this was held in trust and that it was a naked trust in substance.

Now, I may have misapprehended.

MR. DUNCAN: Whether we used the word, if we did, "naked trust," we were talking about the trust—

THE COURT: No, no, I'm talking about the argument

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today. You didn't argue it was in trust?

DR. DUNCAN: No, we're not arguing it's in trust.

THE COURT: I see. All right.

MR. DUNCAN: Maybe I can just say it this way—

THE COURT: No, no. I want the statute. I don't want generalities.

MR. DUNCAN: "When any mixed-blood member of the Tribe has received his distributive share of the tribal assets distributed to the mixed-blood group under the provisions of section 677i of this title, whether such distribution is made in part or in whole to a corporation, partnership, or trusteeship in which he is interested, or otherwise, the Secretary is authorized and directed to immediately transfer to him unrestricted control of all other property held in trust for such mixed blood member—"

And so on. "—except as to his remaining interest in minerals, all of which shall remain subject to the terms of 677-677aa of this title, notwithstanding—"

THE COURT: That's what I thought the statute said.

MR. DUNCAN: All right. Now, 677i(3) talks about partition, setting up of corporations for water grazing, and so on. It does not talk about setting up a corporation for purposes of handling the mineral rights.

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THE COURT: I see.

MR. DUNCAN: And we think we have a right—

THE COURT: That's been done under the eyes of Congress. That interpretation has been indulged. And to my judgment it is not reasonable to suppose that Congress with regard to mineral rights anticipated a distribution to the individual Indians of an undivided interest, under the statutory setup. It doesn't change my view there, and I don't think the statute bears you out.

MR. DUNCAN: When we come to this question, your Honor, that may be whether the United States has title; but when they come to the question of

whether UDC was ever properly set up as the managing agent as pleaded, that, they did not.

THE COURT: Congress certainly contemplated some such agency be set up.

MR. DUNCAN: And they contemplated AUC. And that is what was set up. And for a number of years. And there was no conveyance of any kind between AUC and UDC. The most that could be said is UDC came into existence and worked. But none of the mixed-bloods with the exception of the four signers of the articles consented to UDC's being the manager, and AUC continued to be the manager after the creation of UDC.

THE COURT: Well, I thought that you very effectively convinced me in the Reyes case that this Ute

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Distribution Company was entitled to the proceeds for the benefit of the stockholders, for the mineral interests, and that the owners of the stock were the beneficial owners of the mineral interests by virtue of their stock ownership; and I find it hard to think that, with all the time — and I thought considerable skill and perception used in the Reyes case — that suddenly to accomplish at another end you can completely prove that I was wrong in reliance upon you on that point and say that this was all a terrible mistake or illusion now, that the stock in Ute Distribution doesn't mean a thing, that the rationale of that decision was improper, I'll let the Court of Appeals tell me that before I'm convinced that you were so completely wrong in the other case.

The order dismissing the action will stand.

I'm convinced that I have no jurisdiction; but, even if I had, it would be dismissed on the ground that it is without merit on the face of the complaint.

An appropriate order may be prepared.

If there is nothing further to come before the Court, we'll stand in adjournment.

MR. JOHN BOYDEN: May I ask one question. In view of the decision, what is the nature of the hearing now on July 16?

THE COURT: Well, we have some residual questions,

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as I recall, Mr. Boyden, in the suit to quiet title case, I thought. Now, maybe not.

MR. KLEMM: We have some questions on damages—

THE COURT: I'm referring to the matter that Mr. Boyden was interested in. Weren't there some other cases involved also in that 16th setting? Do you think, gentlemen, this resolves our problems with regard to representation? I thought they were residuals in connection with other cases.

MR. DUNCAN: I think it does. We didn't want to raise the problem. It's been thrust upon us, and we would still like to avoid it.

MR. BOYDEN: I have no reason to avoid. I would like to expose the whole thing, but I see that it's useless at this point.

THE COURT: I certainly have not wanted to be diverted from these very substantial problems we have before us. And I didn't want counsel, either. Some-

times more heat is generated than light. And counsel on all sides have my high respect; and I must say, so that we can get the thing at rest, Mr. Boyden, that I didn't think the problem was something that could be brushed aside, if it were implicit in any matter before me, because if there were a contract not to accept representation by the Tribe, if their claims were in conflict with the Associated [116]

Ute Indian claims, then unless I misunderstand things, it would probably be a matter that would bother you some, too.

MR. JOHN BOYDEN: Yes. If that were the situation, your Honor.

THE COURT: If there weren't such an agreement, then it would be a different thing. Now, there has been cited this contractual provision in the retainer agreement, I think it was, that in the event there was a conflict between the claims of the tribe and the claims of the Associated Utes, you would represent neither with regard to that particular litigation.

Now, it may be that no matter how unmerited the claims might be, so long as they weren't purely and patently frivolous, the contract would still apply, because we never know in testing claims whether they're meritorious or not until the parties are heard. And if that can't be determined until someone who has no right to be heard is heard, it presents quite a dilemma.

Now, there is that matter of the contract; and, as I understand it now, there are no representations by you which are in opposition to the claims of the Utes. Or, are there? If there are, we've got to come to grips with that matter.

MR. JOHN BOYDEN: I think there are not. I think there has been a misunderstanding about my appearance in

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the Reyes case. I was not interested in the outcome of that lawsuit. I was interested in the interpretation of the statute as it had a bearing upon the suits affecting the tribe. So there I did not intervene. I simply came in as amicus curiae.

THE COURT: And I welcomed you and invited you to, because of your great experience in that field; and it was after that that that point became involved.

MR. BOYDEN: I—

THE COURT: On the Reyes case, do you have a feeling that in the Reyes case, I found or concluded anything in opposition to my conclusions today, for instance?

MR. JOHN BOYDEN: Your Honor, the matters that I drew to the attention of the Court are the ones that I am interested in. The thing that you say today, I am entirely in accord, your Honor.

THE COURT: No, no. Do you think there is anything in the Reyes case that is inconsistent with what I have ruled on here today? Maybe I'll have to revise my opinion as to this dismissal, if there is, because I was convinced that my position was right in the Reyes case, and there's no conflict here. If I'm deciding something different here, maybe I'm wrong here.

MR. JOHN BOYDEN: No, your Honor. My quarrel in the *Reynos* case was not with the result. My quarrel in the

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Reynos case was with the confusion of certain terms that were used in the findings of fact. And this is all I drew to the attention of the Court. I didn't ask anything else. I simply asked to clarify those things. And they're specifically put out in my brief. And, as I understand it, they're conceded. I have been told this by counsel. And—

THE COURT: For instance, give me an example.

MR. JOHN BOYDEN: Well, as to the time of termination. I've forgotten the exact number of it, but there were certain rights that are terminated at one time and certain at other times. There are several different kinds of rights. I was very concerned about this, that they be all put in together. And because I know they do not all terminate at the same time. Some of them still exist.

THE COURT: Well, there is nothing in the *Reynos* case that I can see that says that they don't still exist. In fact, there are many things that say that there have been rights that have been preserved subject to this administration.

MR. JOHN BOYDEN: Yes. The thing that I was trying to do was simply try to keep the terms clear, your Honor, and that was all I meant with respect to the *Reynos* case.

THE COURT: I see. Well, you see nothing inconsistent with any findings and this conclusion, then?

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MR. JOHN BOYDEN: No, your Honor. As I see it, the Ute Distribution had a right to do this. And if the other facts there, which I know nothing about — the Court certainly has a right to make a judgment in that regard. It's entirely consistent.

THE COURT: And that entire judgment was preised [sic.] upon the distribution by Ute Distribution Company of something that was reflected in value of stock.

MR. JOHN BOYDEN: There is nothing in my brief that would controvert that at all.

THE COURT: All right.

MR. JOHN BOYDEN: On the one other point with respect to this contract, may I just put this in its light, so that the Court will know—

THE COURT: Certainly.

MR. JOHN BOYDEN: I have represented the Ute Indian Tribe for better than 20 years. When we came to this parting of the ways, when the mixed-bloods voluntarily decided they would like to withdraw and take their share of the reservation, they had me do certain things; and, obviously, there could be a question during the time I was doing that; that is, organizing the corporations which I organized, and there was the question of seeking an amendment to the statute that has nothing to do with any of these cases. And the Affiliated Utes asked me to do this.

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And so I took a limited contract in which I agreed to do it. Now, all of my work has to be approved by the Secretary of the Interior before the statement of payment of fees. And, exactly what I did, I took this and said, "I have to have consent of both."

I got the consent of the Ute Tribe and the Affiliated Utes that while I was doing this work — this contract ended three years — that if there was anything of conflict of interest, I would represent neither.

THE COURT: Of course, the contract, as I read it, Mr. Boyden, wasn't limited to the period of the contract, because the—

MR. JOHN BOYDEN: "Your Honor only has part of the contract."

THE COURT: I see.

MR. JOHN BOYDEN: The contract has an approval by the Secretary of the Interior, which helps to clarify this situation.

THE COURT: Well—

MR. JOHN BOYDEN: But in any event, the thing I was doing is when I took this limited work, that it was never intended that I would ever desert the Ute Indian Tribe.

THE COURT: No. But the contract said you would represent neither.

MR. JOHN BOYDEN: That's right.

THE COURT: Now, whether it was for that limited period—

MR. JOHN BOYDEN: But not perpetually. This contract terminated in three years.

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THE COURT: For instance, on a conflict of interest, I'm just thinking out loud to try to clear the air, because I know that all of you want to do what's right — information or relationships can be established at one particular time, and parties might feel reluctant, even though the contract is for a particular time, to make full disclosures to counsel and have counsel participate in actions for that period of time, if they thought that the same counsel to whom they would make those disclosures would be in a position antagonistic to them.

So it's simply an interpretation of this contract. I don't have to interpret it, but I must recognize, because the conflict of interest problem has arisen repeatedly in my experience, in the same context, it will have to be determined fairly by you whether it was not reasonably contemplated that even though the contract should expire, the inhabitation might not expire.

Fortunately, I don't have to decide that. I haven't the information to do it. And you have. And you'll decide that, and I'm sure it will be a proper decision.

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MR. JOHN BOYDEN: Thank you.

THE COURT: Well, will you prepare—

MR. KLEMM: I'll prepare the order.

THE COURT: Will you prepare an order and submit it to counsel for approval as to form; and approval as to form will in no way waive your position.

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ORDER OF DISMISSAL IN AUC

The defendant's Motion to Dismiss the Complaint having come on for hearing before the Court on July 8, 1968, and the Court having heard arguments of counsel and being fully advised in the premises, and it appearing to the Court that the Complaint fails to state a claim upon which relief can be granted, and it further appearing that the Court lacks jurisdiction over the subject matter of this case.

IT IS HEREBY ORDERED that the defendant's Motion to Dismiss the Complaint is granted, and the action pending before the Court is dismissed.

DATED this 10th day of July, 1968.

BY THE COURT:

A. SHERMAN CHRISTENSEN, Judge
United States District Court

Filed July 10, 1968

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AMENDED PETITION AND AMENDED COMPLAINT IN AUC

Leave of Court being first had and obtained, plaintiff Affiliated Ute Citizens of the State of Utah, acting in its own behalf and for and on behalf of its 490 members, complains and alleges:

1.

Jurisdiction of this Court exists over the subject matter of this cause and over the defendant by virtue of Title 25, U.S.C., Section 345, and Title 28, U.S.C., Sections 1399 and 2409, and the provisions of Public Law 83-671 (25 U.S.C. Sec. 677a, et seq.)

2.

By virtue of the Treaty of Guadalupe Hidalgo between the United States and the Republic of Mexico in 1848 (9 Stat. 108), the Executive Order of October 3, 1861 (1 Kappler 900), the so called Spanish Forks' Treaty" (see the act of February 23, 1864, 13 Stat. 63); the Act of Congress of May 5, 1864 (13 Stat. 63) and the Act of Congress of June 15, 1880 (21 Stat. 199), together with various other acts of Congress dealing with the Ute Indians of the Uintah and Ouray Reservation, Utah, defendant acquired title to a vast expanse of lands and the minerals thereof situated

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in the Uintah Basin, Utah legal title to which was held and to be held by defendant for the Indians of said Reservation, which said Indians were wards of the defendant.

3.

At all times pertinent to this action, the individual 490 members of plaintiff were in part of Indian blood or descent and members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, as enrolled members of said Tribe at all times prior to adoption of Public Law 83-671 by Congress on August 27, 1954 and publication of rolls thereunder and thereafter as "mixed-blood" members thereof as defined in Public Law 83-671 (25 U.S.C. 677 et seq.)

4.

Section 6 of said Public Law 83-671 (25 U.S.C. 677e) expressly provides for the organization of the "mixed-blood" members of the Tribe "for their common welfare" and for the adoption of a "constitution" by majority vote of the "mixed-blood" members, and that such constitution "may provide for the selection of authorized representatives" of the "mixed-bloods." Pursuant to said Law and Section thereof, the plaintiff was formed as an unincorporated association by virtue of its Constitution, a copy of which is attached hereto which said Constitution was adopted under the direction of, or with the consent and approval of, the Secretary of the Interior of the United States on or about the 5th day of April, 1956, and pursuant to which the Board of Directors of plaintiff was granted powers "to perform all the duties and functions of the mixed blood members as the authorized representatives thereof." Plaintiff is now and at all times since its creation, has been, the "authorized representatives" of the "mixed-bloods," within the language, meaning and intent of Public Law 83-671 and whenever in said Law "authorized representatives" is mentioned, said language refers to, and only to, the plaintiff herein. Plaintiff is now and at all times since

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its creation has been the exclusive representative of the 490 "mixed-blood" Ute Indians who constitute its only members. This action is brought by plaintiff for and on behalf of its 490 "mixed-blood" Ute Indian members.

5.

In 1954, the Congress enacted Public Law 83-671 (25 U.S.C. 677, et seq.), declaring all members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, possessed of one-half Indian blood, or less, consisting of the 490 Ute Indians on whose behalf this action is brought, or 27.1686 percent of the then-constituted Ute Indian Tribe, to be "mixed-blood" members of said Tribe, and directing termination of their status as Indians and directing conveyance to each "mixed-blood" of his pro rata share of the Tribal assets.

6.

Under and by virtue of said Act of Congress, the individual 490 members of plaintiff association were granted and claim to be entitled to an individual, undivided pro rata share of 27.1686 per centum of approximately 1,200,000 acres of mineral lands situated in the Uintah Basin of the State of Utah, subject only to the right of plaintiff association to manage said property jointly with the Tribal

Business Committee of the Ute Indian Tribe, and plaintiff association and its individual members are now unlawfully denied or excluded from said lands.

7.

Section 16(a) of said Public Law 83-671 provides:

"(a) When any mixed-blood member of the tribe has received his distributive share of the tribal assets distributed to the mixed-blood group under the provisions of section 677i of this title, whether such distribution is made in part or in whole to a corporation, partnership, or trusteeship in which he is interested, or otherwise, the Secretary is authorized and directed to immediately transfer to him unrestricted control of all other property held in trust for such mixed-blood member by the United States, and shall further remove all restrictions on the sale or encumbrance of trust or restricted property owned

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by such member of the tribe, and Federal supervision of such member and his property shall thereby be terminated, except as to his remaining interest in tribal property in the form of any unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other tribal assets not susceptible to equitable and practicable distribution, all of which shall remain subject to the terms of sections 677-677aa of this title, notwithstanding anything contained in said sections to the contrary." (25 U.S.C. 677o(a)) (Emphasis added.)

Section 10 of said Public Law 83-671 provides:

"... all unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall be managed jointly by the Tribal Business Committee and the authorized representatives of the mixed-blood group, subject to such supervision by the Secretary as is otherwise required by law, and the net proceeds therefrom after deducting the costs chargeable to such management, shall be first divided between the full-blood and mixed-blood groups in direct proportion to the number of persons comprising the final membership roll of each group and without regard to the number of persons comprising each group at the time of division of such proceeds." (Emphasis added.)

8.

Notwithstanding the last phrase of said Section 16(a) commencing with the word "except," no provision of said Law, expressly or by reasonable or necessary implication, provides any limitation on the express direction that the "Secretary is authorized and directed to immediately transfer to him [the "mixed-blood"] unrestricted control" of and over his pro rata share of the mineral estate.

9.

The 490 individual members of plaintiff for whom this action is brought, are lawfully entitled to said mineral estate by virtue of said laws, and in particular Public Law 83-671, and have been unlawfully denied or excluded therefrom by defendant and by reason of said Public Law 83-671, are entitled thereto.

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WHEREFORE, plaintiff prays judgment for an Order of this Court distributing an undivided 27.1686 percent of the mineral estate underlying the Uintah and Ouray Reservation, Utah, to the individual "mixed-blood" members of plaintiff, pro rata, and for such further and additional relief as may appear equitable, proper or just in the premises.

DATED this 19th day of July, 1968.

Adam M. Duncan

Parker M. Nielson

[Attached Constitution of Affiliated Ute Citizens of the State of Utah is reproduced in the Exhibit volume at page 151.]

Filed July 19, 1968

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MOTION FOR REHEARING IN AUC

Plaintiff moves the Court for a rehearing on defendant's Motion to Dismiss and the Order of Dismissal entered herein on July 10, 1968 pursuant to provisions of Rule 59(a) of the Federal Rules of Civil Procedure and for leave to file an amended complaint, a copy of which is attached hereto, for the following reasons:

1. The Court has misconstrued the nature of plaintiff's complaint as being designed to assert claims arising out of the management by the United States of the trust and restricted property of the Indian members of plaintiff, when in truth and in fact, plaintiff's complaint seeks only the conveyance of real property to the members of plaintiff to which they are entitled by virtue of Public Law 83-671.

2. The Court has misconstrued the provisions of Public Law 83-671 as excepting the conveyance of the property which is the subject matter of plaintiff's complaint from the provisions of Section 16 thereof (25 U.S.C. § 677o), when in truth and in fact, the exception contained in said Section has the sole effect of imposing a "restriction" upon the conveyance directed therein, viz., that plaintiff association be granted the rights

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of joint management under Section 10 (25 U.S.C. § 677i).

3. Plaintiff should be granted leave to amend its complaint so as to eliminate therefrom allegations in its original complaint which could be construed as asserting claims inconsistent with the foregoing statements of the purpose of plaintiff's complaint, and to correctly state the origin of the title of the United States.

4. The Court has misconstrued the effect of the amendment to Section 10 of Public Law 83-671 (25 U.S.C. § 677i, as amended) as constituting Congressional approval of the failure to convey the property which is the subject matter of plaintiff's complaint to the members of plaintiff and the granting of certain rights therein to Ute Distribution Corporation, when in truth and in fact, there is no evidence, either in this case or elsewhere, that Congress had any knowledge in adopting said amendment that the formation of said corporation and the transfer to it of certain rights in said property was without the consent of the members of plaintiff or the officers of plaintiff and contrary to the specific provisions of Section 13(2) and (3) of said Law (25 U.S.C. § 677e(2) and (3)).

In further support thereof, plaintiff has attached its memorandum in support of motion for rehearing.

DATED this 19th day of July, 1968.

Adam M. Duncan

Parker M. Nielson

Filed July 19, 1968.

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TRANSCRIPT OF PROCEEDINGS IN AUC

Monday, August 5, 1968

THE CLERK: Affiliated Ute Citizens v. United States of America.

MR. NIELSON: Your Honor, the Court will no doubt recall in this matter the plaintiff's complaint was dismissed, and we have filed a motion for a rehearing on that dismissal. Our sole purpose in filing the motion is to assure that the plaintiff's position in relation to this matter is clearly understood by all parties involved. We, after the hearing at the time of the dismissal, Mr. Duncan and I, reviewed our complaint; and we frankly recognize that there were some possible inconsistencies in our complaint which might have been susceptible of the interpretation the Court placed upon it at the time of the hearing. For that reason we have asked to file an amended complaint, which would rectify some of those problems.

In particular, we noted that in our prayer we had prayed for a petition of the lands involved, which was by reason of the language involved in the jurisdictional statute.

We clearly, however, do not pretend to ask for anything except the conveyance of the interest in the lands which we claim we are entitled to under Public Law 671. And so we have amended the complaint so as to delete that.

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statement in the prayer and certain of the technical problems which we found in the complaint.

Now, we clearly, as I understood the Court at the time of the hearing, when the complaint was dismissed, the Court seemed to be of the view that the purpose

of the complaint was to adjust the trust relationships of the United States with respect to the Indians involved.

That, clearly, is not our purpose. And, again, we have sought to amend the complaint so as to make that very clear, that we are asking only for the conveyance we feel that the statute directs.

Now, in addition to that, there were a couple of other points on which we frankly differed with the Court and its interpretation of the statute, both the jurisdictional and substantive statute involved.

We have submitted a memorandum in relation to those items. I would be happy to discuss them, if the Court so desires.

As I say, they are set out in the memorandum, but very briefly.

We feel and have pointed out in our pleadings that the substantive statute involved, Public Law 671, we feel clearly does direct a conveyance of the minerals involved. The entire act is — even the preamble, the statement of purpose in the act — declares that it's for the purpose of

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dividing the assets and conveying the interests to the mixed-blood members.

Now, at the time of our hearing, the Court referred to an exception which was contained in the section directing conveyance of all the interests of the mixed-blood members. As we have pointed out in our memorandum, we feel that that exception quite clearly does not relate to the act of conveyance, but relates to the matter of the removal of restrictions, which is also referred to in that section. And we feel that that construction is the logical and proper construction, because there are other sections in the act which relate to restrictions upon the interest which is to be conveyed.

But there is no other section in the act or no other provision in the act anywhere which could be considered as having any effect upon those lands if they were not conveyed.

In other words, the section says the land shall remain — or, if I can paraphrase it — the section says that the Secretary shall immediately convey all of the lands and remove the restrictions as to them except as to the interest in the minerals, which shall remain subject to the other provisions of the act.

THE COURT: Well, there are portions of the statute which clearly except the mineral interest, in my judgment.

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MR. NIELSON: We just wanted to be sure that the Court understood our position that the sections — I believe the Court is referring to provision for joint management by the Tribe and the authorized representative. We view that as a restriction upon the interest which is conveyed, rather than an exception to the direction of conveyance. And—

THE COURT: I think I have your position.

MR. NIELSON: Yes. And the other point, of course, is, with respect to the jurisdictional statute, which, again, we point out we feel clearly does apply; that we do have an act, Public Law 671, which in our view directs the conveyance of the minerals; that it does not refer specifically or exclusively to allotments, but it

refers also to land as to which any Indian or part Indian claims to be entitled by reason of an act of Congress, which we feel it clearly has. And we have sought to point out that even some of the cases which were cited by the Government in their memorandum support our construction of them.

With those statements, unless the Court would like to discuss any particular aspect of the case, we would submit the matter and request leave to file our amended complaint and consideration of our memorandum.

MR. KLEMM: If it please the Court, I don't believe there is anything new that has come in on this [128] motion for reconsideration. I think that the amended complaint simply restates what they said before, except they did leave out a couple of matters in the prayer, and they did cite the statute, quote from the statute itself. In their original complaint they only cited the statute, and in the amended one they quoted from it.

I don't think they've added anything new.

In this particular case, the plaintiffs have assumed throughout that the Court disregarded the value of mineral interests in assessing damages in the *Reynos* case.

Now, this is simply not true. In this particular case I would like to refer the Court to page 106, paragraph 9, of the *Reynos* case, which talks about the damages. These are the words of the Court:

"The Court believes that its problem is not merely to determine what an undivided mineral interest ultimately might be worth on the basis of limited known transactions and developing technology and conditions were it developed or realized, or to indulge in similar projections of value nor to be governed solely by the sales prices received for said stock during the particular period in question. But it does consider that the data in evidence going to both these matters were and are relevant in varying degrees to its basic problem of determining in

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reasonable approximation as of the time of the plaintiffs' losses the fair value of said stock."

Now, what the Court didn't do was accept the "pie in the sky" values that the plaintiffs had set upon their stock; but the Court did consider the value of the minerals to the degree that it affected the reasonable value of the stock. And so in that way, the cases are in contradiction to each other. And if the plaintiffs are now entitled to recover the mineral interests themselves, it must have a direct bearing on the damages assessed in the *Reynos* case.

And in that way, and I think in other ways, the two cases are contradictory to each other.

Now, Section 345 clearly requires an allotment of land. In their motion for reconsideration, they left the heart of this statute out; and, quoting this, they left out the key words here. In the statute itself it says:

"All persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment Act or under any grant made by

Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to

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be lawfully entitled by virtue of any Act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States."

The words "allotment of land" are words of art here—

THE COURT: This is the same thing we went over.

MR. KLEMM: We went over it before, your Honor, and I don't think there is any reason for me to repeat it. I would say that I think that the counsel for the plaintiffs here misunderstand the true nature of the oil and gas and minerals that underlie the reservation. These are tribal lands, and they retain their tribal character, and they were never under any condition to be transferred to the individual mixed-bloods, because they did not have individual ownership right in those lands.

And this is tribal property. It, I suppose, can be compared to this post office building here. If I were to move to Canada as a citizen of the United States and wanted to give up my citizenship, I couldn't come back and say, "Now, I want to have my share of that post office or of any of the assets of the United States."

This is indivisible, it can't be divested to persons individually. This is also true of the nature of the oil and gas and mineral rights in this reservation. They are tribal in character, and they're not to be distributed,

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and the UDC stock represented, of course, as the best way possible, the mixed-bloods' interest in this, which entitle the mixed-bloods to share in the management and to share in the proceeds only. They had no right to the land.

And with those comments, we'll submit the case, your Honor.

MR. DUNCAN: May I just take a minute, your Honor?

Quite frankly, the thing that troubles us most about this motion is we do not want the Court or Mr. Klemm to think that the commencement of this action was in any way contended to be inconsistent with *Reynos*.

We may be in the wrong, but we were in good faith wrong.

THE COURT: Certainly, I took into consideration the evidence with regard to the prospects. And to that extent, to now turn over all of the minerals would frustrate the basis in part of the *Reynos* case.

MR. DUNCAN: Your Honor, I think that's probably right. Only to this extent, however, that our evidence of "pie in the sky" based, as we will argue to the Court — I think it's day after tomorrow, but we will argue this question of damages.

The Government is chopping away. They want \$120,000 taken off.

The evidence is based upon leases at the time.

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The minerals were worth \$28.00 a share. And so we're obviously receiving a small fraction of what Dr. Christiansen—

THE COURT: You're assuming that I must take Dr. Christiansen's testi-

money at face value and say that was an immediate value that could be handed over. And I didn't accept that.

MR. DUNCAN: I appreciate that you didn't, your Honor.

THE COURT: Now, of course, if you had obtained in *Reynos* what you believe Dr. Christiansen's evidence would justify and what you were seeking, then it would be quite obvious that this theory here would be not only incongruous, but repugnant to any such idea. That's true. I think that's right—

THE COURT: If you got the full value of the minerals, and then went ahead and had the minerals distributed to the Indians, obviously—

MR. DUNCAN: Get it twice.

THE COURT: — it would be an Alice in Wonderland sort of a thing. Not simply a matter of degree.

MR. DUNCAN: I'm trying to come to grips with that. In the *Reynos* case, we have twelve plaintiffs, and we have 490 people.

THE COURT: I understand.

MR. DUNCAN: The \$28,000, the "pie in the sky,"

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which we didn't think was that at all—

THE COURT: It would still be incongruous.

MR. DUNCAN: That would be 63 and 4. All witnesses testified that the fair value of the shale was worth considerably more when we tried the case in '67 than it was in '63 and '64. So even the twenty-eight might not be full compensation.

But we had in this case, when we were through, a hundred or so plaintiffs; and in case we're talking about 490. So I think that the most that could be said about what the — as far as the findings of fact are concerned, we feel they are consistent. We think they are sound in every respect, fully documented by the evidence.

But if, for example, Melvin Reed were to recover \$12,000, \$14,000, and the AUC case would prevail, the most that could happen was he might have to pay \$12,000 as an offset. He couldn't recover twice:

But I don't — because he got the minimal value of \$1,500 a share as of what it was worth in '63 would not pose anything more than an offset. That was our position.

Now, we're here today in part, at least, to indicate to the Court that we did not in any sense attempt to second guess the Court. If we did, it was an error. But we don't think that it was the purpose—

THE COURT: I think that clarifies it.

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MR. DUNCAN: That was the most important thing. Then this 345 — and I don't see how Ralph can read it the way he wants. The Court has jurisdiction. There is an act of Congress. We say 671 conveys the minerals. Now, we get to some real refinement, and it's an ambiguous muddled-up law. We've been through that enough to know.

But the sections that say "convey" are different from those that say "convey subject to management restrictions."

And we think that if the amended complaint were filed, and Mr. Morris is here representing UDC, Mr. Boyden is here representing the Tribe, it's simply a question of law: For the Court to say, "I don't read the statute that way," then at least the issue has been tried.

THE COURT: I've said both. I don't think I have jurisdiction. If I do, I think your construction of the statute is not valid; and the motion for reconsideration will be denied.

MR. NIELSON: Your Honor, with respect to our proposed amended complaint—

THE COURT: Leave will be denied.

MR. NIELSON: It is denied? All right. Thank you.

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ORDER IN AUC

The plaintiff's motion for rehearing having come on for hearing before the Court on August 5, 1968, and the Court having heard arguments of counsel and being fully advised in the premises,

IT IS HEREBY ORDERED as follows:

1. That plaintiff's motion for rehearing is denied.
2. That plaintiff is denied leave to file its Amended Complaint.

DATED this 7th day of August, 1968.

BY THE COURT:

A. SHERMAN CHRISTENSEN, Judge
United States District Court

Filed August 7, 1968

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Judgment

This case came on for trial to the court sitting without a jury commencing on Tuesday, October 3, 1967, and continuing through Friday, October 6, 1967, and resumed on Wednesday, October 18, 1967, and concluding on Thursday, October 19, 1967. Adam M. Duncan, Esquire and Parker M. Nielson, Esquire, appeared on behalf of plaintiffs; H. Ralph Klemm, Esquire, Assistant United States Attorney appeared on behalf of defendant United States of America; Marvin J. Bertoch, Esquire, of Ray, Quinney and Nebeker, appeared on behalf of defendants, First Security Bank of Utah, N.A., John B. Gale and Verl Haslem. The motion of the Association on American Indian Affairs, Inc., to intervene and file brief as amicus curiae was heard and granted on October 18, 1967, Arthur Lazarus, Jr., Esquire appearing as counsel. In accordance with the pre-trial order, this trial was confined to the claims of twelve plaintiffs, referred to in the record as "bellwether" or "designated" plaintiffs and general factual and legal matters affecting their claims in common with

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the claims of the other plaintiffs herein. Said designated plaintiffs are Glen Reed, Fred Burson, Letha Wopsock, Louise A. Case, Melvin Reed, Marguerite M. Hendricks, Joseph Arthur Workman, Leonard Richard Burson, Oran F. Curry, Stewart Eugene Reed, Richard Henry Curry and Charles T. Reed. Witnesses were sworn and testified, documentary evidence adduced and briefs and memoranda of the parties submitted to the court.

Whereupon the Court, having made and entered its Findings of Fact and Conclusions of Law, and being fully informed and advised in the premises and good cause appearing therefor, hereby

Orders, Adjudges And Decrees:

That judgment is hereby awarded against defendants First Security Bank of Utah, N.A., John B. Gale and Verl Haslem and each of them jointly and severally, as follows:

In favor of plaintiff,	In the amount of,
Glen V. Reed	\$ 11,219.07
Fred LaRose Burson	10,100.13
Letha Harris Wopsock	15,449.95
Louise Allen Case	10,226.09
Melvin Reed	13,464.07
Marguerite Murray Hendricks	7,649.95
Joseph Arthur Workman	7,119.07

Leonard Richard Burson	9,969.07
Oran F. Curry	11,184.07
Stewart Eugene Reed	10,169.07
Richard H. Curry, Sr.	10,299.95
Charles T. Reed	12,669.07
Total	<u>\$129,519.56</u>

That judgment is hereby awarded against defendant United States of America as follows:

In favor of plaintiff,	In the amount of,
Glen V. Reed	\$ 5,469.07
Fred LaRose Burson	10,100.13
Letha Harris Wopsock	6,249.95
Louise Allen Case	10,226.09
Melvin Reed	13,464.07
Marguerite Murray Hendricks	7,649.95
Leonard Richard Burson	9,969.07
Stewart Eugene Reed	10,169.07
Richard H. Curry, Sr.	4,649.95
Total	<u>\$ 77,947.35</u>

[1313]

That judgment, no cause of action, is entered on the claim of Oran F. Curry, Joseph Arthur Workman and Charles T. Reed against the United States of America.

That judgment is hereby awarded against all defendants in favor of the named plaintiffs for plaintiffs' costs in the amount of \$855.71. That the Court reserves and retains jurisdiction to consider and dispose of the claims of the remaining plaintiffs herein.

The Court, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, determines, finds, adjudges and decrees that there is no just reason for delay of the entry of final judgment herein respecting the claims of the twelve designated plaintiffs and such judgment is hereby entered as provided in said Rule.

Made And Entered this 5th day of September, 1968.

A. Sherman Christensen
United States District Judge

Judgment Entered 9-9-68

Filed September 6, 1968

[1324]

OPINION OF THE COURT OF APPEALS IN REYOS

SETH, Circuit Judge.

These suits were commenced by eighty-five individuals with whom the United States originally had full trust relationship as Indians of the Tribe of the Uintah and Ouray Reservation in Utah. Of this group of plaintiffs twelve individuals were selected by the parties as the ones whose cases would be tried first as test cases. These are referred to as the plaintiffs and are the appellees herein.

An Act of Congress directed that the federal trust relationship with the mixed-bloods of the Tribe be terminated, and the tribal property be divided between the mixed-blood and the full-blood groups. This is referred to as "termination." All plaintiffs belonged to the group of some 490 individuals designated by statute as the mixed-bloods of the Tribe.

The termination statute (68 Stat. 868, 25 U.S.C. §§ 677-677aa) permitted the mixed-blood group to form associations or corporations to handle some of the property difficult or impossible to distribute to individuals which was allocated to the mixed-blood group, and for matters of general concern to this group. One such corporation so formed was the Ute Distribution Corporation, the stock of which and the stockholders are concerned in these suits.

One type of property which the termination statute stated was not to be distributed to individuals was the gas, oil, and mineral interests. Upon division of the tribal property, a portion thereof in undivided interests was allocated to the mixed-blood group. The Ute Distribution Corporation was organized to "handle" this interest of the mixed-bloods jointly with the Tribal Committee which had authority over the full-bloods' share. It was also organized to distribute the group's portion of unliquidated claims against the United States.

Ten shares of stock in the UDC were issued to each person in the mixed-blood group, and distributions or dividends were paid to the stockholders from time to time. The defendant bank entered into a contract with this corporation to act as transfer agent and to provide to it some record keeping and related services. In addition, the bank, under the termination statute, was authorized to act as trustee of express trusts for mixed-bloods who, in the opinion of the Secretary of the Interior, needed such help.

The individual defendants Gale and Haslem were assistant managers of a facility of the bank located in an area where a number of the mixed-bloods lived, and who dealt directly with some of the plaintiffs in the sale or transfer of their stock.

The plaintiffs were stockholders of the UDC who sold shares of their stock to non-Indians. The bank facilities and services were used in connection with these sales or some of them. The causes of action against the bank allege a breach of the bank's duty arising from the agreement with the UDC and from its participation in the sales of stock. The action against the bank is also based on Regulation 10b-5 of the Securities and Exchange Commission. The causes alleged against the individual defendants Gale and Haslem are based solely on this Regulation.

Some time after these suits were filed the complaints were amended to include a cause of action against the United States under the Tort Claims Act. This cause

alleged a breach of duty by the Secretary of the Interior and the local officials of the Bureau of Indian Affairs in connection with the transfer of the shares of stock.

The trial court, in some one hundred pages of findings and conclusions, found the defendant bank and defendants Gale and Haslem liable for damages to each of the twelve plaintiffs whose cases were selected as test cases for all sales made by them. The United States was found liable only as to some of the plaintiffs. The trial court used the figure of \$1500 per share as a value for computing damages.

All defendants have appealed from the judgment of the trial court, and the twelve designated plaintiffs, whose cases were tried, have cross-appealed on the ground that the damages were inadequate.

Liability of the United States Under the Tort Claims Act:

The position or status of the plaintiffs as related to the provisions and the execution of the termination statute has become one of the fundamental issues on this appeal. The statute, Public Law No. 83-671 (25 U.S.C. §§ 667-677aa), provides solely and expressly for the termination of the federal trust relationship to the mixed-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah, and for termination of federal supervision over the trust and restricted property of the mixed-blood members of the Tribe. It directs that there be made a division of the tribal property between the mixed-blood and the full-blood members, and provides the procedure for termination of the mixed-bloods.

An examination of the significant portions of the statute is necessary for a proper consideration of the issues. The statute provides for the preparation of membership rolls for each group and the partition and distribution of the tribal assets between the two groups. It also states that upon distribution of the divisible property to the mixed-blood members, federal supervision of such member and his property shall thereby be terminated except as to property not susceptible of practical distribution such as oil, gas, and mineral rights which shall remain subject to the provisions of the Termination Act. Upon termination the mixed-blood individuals shall not be entitled to the services performed by the Government for Indians; that statutes of the United States which affect Indians because of their status shall no longer be applicable to such persons, and that the laws of the several States shall apply to the said members in the same manner as to other citizens within the State. The statute further states that the Secretary shall "protect the rights of members of the tribe who are minors, non compos mentis, or, in the opinion of the Secretary, in the need of assistance in conducting their affairs, by such means as he may deem adequate, . . ." Provision is made for the mixed-blood members of the Tribe to organize for common purposes and adopt a constitution and bylaws. The Act specifically recites that corporations may be formed by the mixed-bloods for grazing of livestock, for the "handling" of water and water rights, and that distribution of property may be made to such corporations.

As to gas, oil, and mineral rights in the Ute lands, provision is made that these interests be held in undivided shares by the full-blood members on the one hand, and by the mixed-blood group on the other hand. The Act contemplates that an

organization be formed by the mixed-blood group for the purpose of empowering individuals to act as "the authorized representatives of said mixed-blood group in the joint management with the tribe and in the distribution and (sic) [of] unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind. . . ." As indicated in the foregoing sentence provision is made in the Act for the joint management of the gas, oil, and other mineral rights by the Tribal Business Committee and the "authorized representatives" of the mixed-blood group. The Act directs that the net proceeds therefrom after deducting the cost chargeable to such management shall be divided between the full-blood and the mixed-blood groups in proportion to their respective numbers on the final membership rolls.

The statute directs that at a stated time the Secretary of the Interior issue a proclamation that the federal trust relationship is terminated. This proclamation was so issued on the 26th day of August, 1961, following the distribution of the property to the mixed-blood members excepting the oil, gas, and minerals as contemplated by the statute.

The mixed-bloods formed a corporation in 1956, the Ute Distribution Corporation (UDC), and 4900 shares of stock were issued. Each mixed-blood received ten shares. The corporate charter recites that it was formed to "manage jointly with the Tribal Business Committee of the full-blood members of the Ute Indian Tribe" the gas, oil and mineral rights in common ownership and unliquidated claims against the United States. This was the undistributed property and legal title remained in the United States. The Secretary of the Interior acquiesced in the formation of the corporation, and approved the Articles of Incorporation. The transfer of shares in this corporation by the plaintiff mixed-bloods to non-Indians gave rise to this litigation. The defendant bank became the transfer agent for the transfer of shares of UDC stock. Distributions to UDC shareholders of receipts from mineral leasing were made from time to time.

Of particular significance to the issues on this appeal is a provision in the termination statute giving the right to the mixed-blood members to dispose of property they received by distribution. This section states:

"Any member of the mixed-blood group may dispose of his interest in the tribal assets prior to termination of Federal supervision, subject to the approval of the Secretary. In the event a member of the mixed-blood group determines to dispose of his interest in any of said real property at any time within ten years from August 27, 1954, he shall first offer it to the members of the tribe, and no sale of any interest, prior to termination of Federal supervision, shall be authorized without such offer to said members of the tribe in such form as may be approved by the Secretary. After termination of Federal supervision the requirement of such offer, in form to be approved by the Secretary, shall be a covenant to run with the land for said ten-year period, and shall be expressly provided in any patent or deed issued prior to the expiration of said period." (25 U.S.C. § 677n).

See also the Secretary's Regulations at 25 C.F.R. § 243.8.

The essential elements of the quoted section were incorporated in the Articles of Incorporation of the Ute Distribution Corporation to govern the sale of the corporate shares. Thus in the event that a stockholder of the Ute Distribution Corporation desired to sell his stock before August 27, 1964, it was necessary that it first be offered for sale at a stated price to the Tribe or to the members of the Tribe. The procedures and the documents necessary to carry out this provision were arranged for and agreed upon by the local representative of the Bureau of Indian Affairs, by the defendant bank as transfer agent, and by the UDC.

Much of the testimony during the trial concerned the execution and delivery of various documents which were required to carry out this requirement of the corporate charter. This provision can best be referred to as a right of refusal in the members of the Tribe or the Tribe. It expired on August 27, 1964.

As indicated above, the trial court determined that the United States was liable to the plaintiffs under the Tort Claims Act by reason of a breach of duty in connection with the plaintiffs' sale of their shares of stock in the UDC. This is based on a conclusion that a residual wardship or trust relationship existing between the United States and the plaintiffs survived the statutory termination procedures. The trial court found that the United States had a duty to discourage and to prevent "inconsiderate," "improper," "illegal," and "improvident" sales by the plaintiffs to non-Indians. The court further found that if the United States had prevented irregularities in connection with such sales, "... said sales would not have been made, and that the sales of their stock by the designated plaintiffs was the proximate result of the failure of the United States ... to use reasonable care." The court also determined that the United States had reasonable cause to know that the plaintiffs were being imposed upon and that the other defendants were acting improperly. Thus the court held that the negligence of the United States was the proximate cause of the sale of the stock by the plaintiffs.

In its findings and conclusions the trial court does not refer to any particular source of the Government's duty other than the statement that "limited aspects of the federal trust relationship continued until the later date [August 27, 1964] with respect to the restrictions governing the alienation of the stock in the Ute Distribution Corporation," and that under "such continuing duties," it was obligated to discourage and prevent improper and improvident sales. It would thus appear that the court found the limited trust relationship to continue by reason of the right of refusal which was held by the members of the Tribe or the Tribe and applicable to sales of the corporate stock.

The plaintiffs in this appeal urge that some continuation of the supervision or wardship giving rise to a duty on the part of the United States resulted from the right of refusal. Plaintiffs refer to the provision as a "restriction on property."

We must hold that the trial court was in error in this respect. The provision in the Articles of Incorporation that if the stock was to be sold before August 27, 1964, it should first be offered to "members of the Tribe," constitutes no more than a typical right of refusal in the members of the Tribe or in the Tribe. It was somewhat more difficult to carry out by reason of the fact that notice had to be

given to a fairly large number of individuals and provision had to be made to advise the prospective seller that his offer had or had not been accepted by the members of the Tribe. This the Bureau of Indian Affairs undertook to do. It was also necessary if an offer was not accepted, and the prospective seller completed the sale to a stranger, to demonstrate to the Tribe or its members that the sale was in accordance with the offer made to them. This was done by an affidavit executed by the seller stating the sales price received. Other than these complications the provision is a commonplace one.

Considerable argument is presented as to whether or not the mixed-bloods were members of the Tribe for the purpose of the right of refusal or whether the right was in the Tribe as such or in the members, but this need not be decided for it is clear that the plaintiffs themselves had no rights under the right of refusal. For a discussion of this point see *Ute Indian Tribe of the Uintah and Ouray Reservation v. Probst*, Tenth Circuit, Nos. 125-69 and 126-69, April 20, 1969, F.2d (10th Cir.). The shareholder who was here proposing to sell his stock cannot be considered to be within the group in which the right vested. The right was granted clearly to permit the members of the Tribe, the Tribe, or the full-blood members to have the first right to purchase property which was about to be sold to an outsider. This provision was for their benefit in an economic and practical way, and if any purchase was to be made, the members of the Tribe or the Tribe had to do it. The record shows that the Tribe considered purchasing UDC shares when offered, but did not do so nor did any individuals in the Tribe. The right of refusal did not create any "restricted property" in the shares as the term is generally used.

The right of refusal thus created no duty on the part of the Government to the then terminated mixed-blood plaintiffs who were seeking to sell their shares of stock. Likewise the procedures and documents devised to carry out the right of refusal and their execution and delivery created no such duty on the part of the United States to the plaintiffs. The statute expressly provides for termination of the Government's relationship with the individual mixed-bloods. The provisions are clear and the termination was accomplished and is final. It is clearly within the power of Congress and no one else to provide for such an end to the relationship between these individuals and the Government. *United States v. Waller*, 243 U.S. 452; *United States v. Nice*, 241 U.S. 591; *Tiger v. Western Investment Co.*, 221 U.S. 286. It is not for administrative officials or for the courts to modify this statutory termination by the creation of some status lying between wardship and complete termination.

There is not an abundance of authority on the application of termination statutes; however, the court in *Crain v. First National Bank of Oregon*, 324 F.2d 532 (9th Cir.), considered the Termination Act relating to the Klamath Tribe. There the court considered determinations made by the Secretary to create express trusts for those "in need of assistance in conducting their affairs," and the effectiveness thereof after termination. The court held that termination was complete except as to the express trusts, and recognized the power of Congress to provide the how, when, and extent of termination. The plaintiffs here urge that the

Crain case holds that there continues some trust relationship with all the terminated members. Crain holds that where express trust exists, the individuals under such trusts cannot complain that their property is in trust while others may have received theirs outright. We are not concerned in the case before us with the property of individuals under express trusts. See also *Menominee Tribe v. United States*, 391 U.S. 404, and *Klamath and Modoc Tribes v. Maison*, 338 F.2d 620 (9th Cir.).

The trial court was thus in error in concluding that "limited aspects of the federal trust relationship continued," or that any form of wardship continued, and thus that some duty on the part of the Government to the plaintiffs continued after termination in connection with their sales of UDC stock. There being no duty the trial court was in error in awarding damages against the United States under the Tort Claims Act.

Position of Defendant Bank Under its Contract With The UDC:

The legal relationships and the business relationships between the plaintiffs and the defendant bank, and with the Ute Distribution Corporation were determined basically and initially by the contract which had been entered into between the bank and the UDC. This agreement was modified somewhat from time to time in practice. The contract was entered into in 1958, but the principal issues with which we are concerned took place in the years 1963, 1964, and 1965.

The principal purpose of the contract between the bank and the UDC was to have the bank provide stock transfer services, to do the corporate record keeping, the corporate accounting, and handle distributions or dividends.

Of particular consequence in this case was the provision that the bank would act as stock transfer agent for the corporation, and would also assist the corporation in the conduct of its business. The record indicates that it was expected that the bank in the performance of its duties would also accommodate or provide stock transfer services for the individual stockholders of the corporation. This was demonstrated by the fact that the bank was to provide facilities and personnel at Roosevelt, Utah, in an area where many mixed-bloods resided, in order to accommodate transfers of stock. The trial court found that the Roosevelt office of the bank was maintained in part "... for the purpose of facilitating and assisting mixed-bloods in the transfer of Ute Distribution Corporation stock. . . ."

It is apparent that the transfers of stock of this particular corporation would be somewhat complicated by the existence of the right of refusal in the members of the Tribe, which has been hereinabove described. As indicated, this right of refusal necessitated the creation of forms which would demonstrate that the right of refusal had been complied with in order that the bank could proceed with its customary duties as transfer agent.

The contract provided for direct compensation to the bank as transfer agent. It is also apparent from the record that the bank was seeking individual accounts from the tribal members and others. It must be assumed that the parties contemplated the usual notary fees and other ordinary fees incident to the transfers of shares.

As a separate matter the bank had also solicited the use of its trust facilities for express trusts to be established by the Secretary for Indians whom he felt were not able to handle their property, all as provided in the termination statute. The position of the bank under these express trusts and the statutory provisions for them must be contrasted with the position of the bank in its capacity as transfer agent. The two created separate and distinct functions and duties on the part of the bank.

The stock transfer contract contained no provision whereby the bank was to discourage stockholders from selling or transferring their shares; instead the procedure which was established was to facilitate such transfers and located at a place convenient to prospective transferees.

As the contract was put into practice, the bank retained the stock certificates of the individuals, and the transfers were handled by stock powers in the usual way. The record shows that the certificates were so retained by the bank in order to prevent their loss by the individual stockholders with the attendant problems to the corporation and the transfer agent in replacing lost certificates. As will be hereinafter mentioned, the stock certificates bore a warning or admonition to the owners to be careful in selling them as they were of undetermined value. Since the stockholders did not have possession of the certificates, they did not have an opportunity to read this warning.

Much of the testimony on behalf of the plaintiffs concerned the contents of affidavits which were executed by the plaintiffs in connection with their sale of shares. These affidavits were devised to carry out the right of refusal in that they were to demonstrate that the individual stockholder had in fact sold the shares for the price that he had theretofore offered them to the Tribe or its members by public notice. The affidavit was thus to show that the members of the Tribe did in fact have a real first refusal at the actual selling price. The record shows that in some instances the affidavit may not have accurately described the facts in connection with the sale to the third party. Under the procedure the sale was to be for cash, but the record shows that instead some plaintiffs received automobiles or other tangible property directly or indirectly for their stock instead of cash, or part cash and part tangibles. Bank employees notarized most of these affidavits. The plaintiffs here thus complain that these affidavits which they executed were not accurate, and that the bank and its officials were aware that they were not correct. The record also shows that the Bureau of Indian Affairs office relied upon the recitations in the affidavits when received and issued to the bank a certificate which acknowledged that the right of refusal had been complied with and that the bank could proceed to transfer the shares in the usual way. No shares were transferred by the bank without having first received such a certificate during the period the right of refusal was operative.

The trial court expressly concluded that the bank had a duty to discourage the plaintiffs from the sale of their shares of stock of the UDC. This finding or conclusion is not supported by the record as no such duty was created by the practice of the bank and none was provided in the contract. Instead the stock transfer provisions and facilities were provided in order to accomplish and facilitate trans-

fers. The bank was obviously obligated to transfer the shares before August 27, 1964, when requested and when the representative of the Bureau of Indian Affairs indicated that the right of refusal had been honored; and after August 27, 1964, when the stockholder requested that a transfer be made.

The bank, shortly after the contract was executed, received a letter from the attorney for the Ute Distribution Corporation asking that it attempt to discourage sales, but no response was made to the letter and no duty or obligation was created thereby. As described above, Congress had directed termination of the Government's relationship with the plaintiffs, and this had been accomplished at the pertinent times. The business inexperience of the plaintiff stockholders does not give rise to any duty on the part of the bank to treat them in any manner different than it would treat any other customer inexperienced in business. The record is clear that the plaintiff's corporation, the UDC, and its officers were active in their attempts to discourage stockholders from transferring their shares and had written letters and held meetings on this subject, all apparently with little success.

It would appear that the trial court placed considerable reliance in reaching its conclusion on the asserted inaccuracies in the affidavits executed by the plaintiffs concerning their ultimate sales of the shares. However, the bank or the Government had no duty as these plaintiffs to see that they executed affidavits that reflected the true transaction. Furthermore the affidavits were executed in connection with the right of refusal in which, as indicated above, the defendants had no interest. It is difficult to see how they can complain of inaccuracies in their own affidavits.

The record shows that the bank officials at the Roosevelt office of the defendant bank were active in encouraging a market for the UDC stock among non-Indians. This was probably not contemplated by the UDC-bank relationship. This gave rise to some indirect benefits to the bank by way of increased deposits, but it did not constitute a violation of any duty the bank may have had to the plaintiffs by contract or otherwise.

Liability Under Regulation 10b-5 of the Securities and Exchange Commission:

The only cause of action alleged against the individual defendants Gale and Haslem is based upon the violation of Regulation 10b-5 of the Securities and Exchange Commission (17 C.F.R. § 240.10b-5). This regulation was promulgated under the authority of section 10(b) of the 1934 Securities and Exchange Act. This cause of action is also asserted against the defendant bank. Each plaintiff states a separate cause against each of such defendants.

The record shows that the defendant Gale purchased for resale for his personal profit ten shares of UDC stock from two of the plaintiffs. The several plaintiffs sold 122 shares of their stock in some thirty-two separate transactions. The trial court found the defendant Gale liable on the sale of all of the 122 shares.

As to his individual purchases, the record shows that Gale bought five shares from the plaintiff, Glen V. Reed, on July 8, 1964, for \$350 per share. This purchase was made by Gale for Neal H. Phelps and Esther Phelps, or were resold to

such persons who paid Gale \$430 per share for these shares. Defendant Gale did not advise plaintiff Reed of the resale.

Gale also purchased three shares of stock from the plaintiff, Letha H. Wopsock, some time after August 21, 1964, for \$350 per share for resale at a higher price which is not disclosed in the record. He also purchased another share from the same person in October 1964 for \$400 and an additional share in November 1964 for \$350. The disposition by Gale of these two shares is not indicated in the record.

The record does not show whether or not the defendant Gale participated for his personal profit or derived a personal profit from the purchase by other persons of shares of stock from the plaintiffs.

The participation by the defendant Gale in the sales by other plaintiffs to other persons as shown in the record need not be described in detail. In these transactions a typical participation by the defendant Gale was to act as a notary upon affidavits executed by the purchaser in connection with such a sale which have been hereinabove described or to guarantee the seller's signature on a stock power which was the ultimate basis for the transfer of the shares of stock. As indicated above the trial court found the defendant Gale liable on each of these transactions. However, we hold this to be in error.

The "participation" by the defendant Gale in the execution of documents as shown by the record in connection with these sales cannot constitute a breach of duty on his part to any of the plaintiffs. In this connection he did no more than to perform ministerial functions required to carry out the transfer of the shares of stock. In this connection the defendant had no obligation to determine whether the recitations made in the affidavit were correct or not. Furthermore, even if he may have known that the recitations in this affidavit were not entirely correct, the plaintiff executing the particular affidavit was prepared and did assert that the facts were correct, and defendant Gale had no obligation to perform anything but the requested ministerial acts.

As to the individual defendant, Verl Haslem, the record indicates a participation in the transactions which is similar to that described above as to the defendant Gale. The trial court also found this defendant liable on each of the thirty-two transactions covering the 122 shares sold by the plaintiffs in this action. The record shows that the defendant Haslem purchased in November 1964 one share of the UDC stock for a third party or for resale for his personal profit from plaintiff Workman for the sum of \$350. This was resold by this defendant for an undisclosed price to his brother.

This defendant also purchased on August 31, 1964, five shares of stock from plaintiff, Glen V. Reed, for \$400 per share and resold the stock apparently on the same day at a price not disclosed in the record.

This defendant Haslem "participated" in the other transactions much in the same manner as did the defendant Gale by the execution of affidavits and of signature guarantees and in some instances had nothing whatever to do with sale. As to these transactions, we find no duty on the part of this defendant to any of the plaintiffs as his acts were purely ministerial in character and were required to

accomplish the stock transfers. Likewise his execution of affidavits or guarantees of signature gave rise to no liability to the plaintiffs. Again although the contents of the affidavit may not have been entirely correct, and the defendant may have known of this fact, it did not create any liability to the maker of the incorrect affidavit.

The record clearly shows that the defendant bank, the employer of the defendants Gale and Haslem, had knowledge that its employees were purchasing stock for their own account. Further the record shows that in these transactions, the employees used the bank facilities, premises, and personnel. Under these circumstances, these employees as far as the plaintiffs were concerned were apparently acting within their authority. Thus the bank did become liable for any violation of the Regulation 10b-5.

Regulation 10b-5 reads as follows:

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,

"(1) to employ any device, scheme, or artifice to defraud,

"(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

"(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security."

Neither the regulation nor the Act contains any statement of standards to be applied or elements necessary in actions for civil liability to be brought under the Act, and in fact there is no express provision for such actions.

The origin of the rule, its relation to section 17 of the 1933 Act (15 U.S.C. § 77q(a)) and the initial doubt as to whether civil actions were contemplated need not be stated here as these matters are elsewhere fully described. *Jensen v. Voyles*, 393 F.2d 131 (10th Cir.); *Doelle v. Ireco Chemicals*, 391 F.2d 6 (10th Cir.); *Crist v. United Underwriters, Ltd.*, 343 F.2d 902 (10th Cir.); *Stevens v. Vowell*, 343 F.2d 374 (10th Cir.). See, *Cohen, Truth in Securities Revisited*, 79 Harv. L.Rev. 1340; 3 *Loss, Securities Regulation*, ¶¶ 1785-86; *Fischman v. Raytheon Mfg. Co.*, 188 F.2d 783 (2d Cir.); *Kardon v. National Gypsum Co.*, 69 F.Supp. 512 (E.D.Pa.); *Securities & Exchange Comm'n v. Texas Gulf Sulphur Co.*, 401 F.2d 833 (2d Cir.) (258 F.Supp. 262); *Annot.*, 37 A.L.R.2d 649; 59 Yale L.J. 1120; 20 Stan.L.Rev. 347; 63 Nw.U.L.Rev. 452; 16 U.C. L.A.L.Rev. 404.

As to the elements to be established, the record shows that the individual defendants made a misstatement of a material fact in representing, in those instances wherein they purchased stock for sale at a personal profit, that the prevailing price or market price was the figure at which their own purchase was made. This representation was obviously false in those instances in view of the fact that they resold the shares almost immediately at a higher price. The record shows that the plaintiffs considered these defendants to be familiar with the market for the shares of stock and relied upon them when they desired to sell their shares. The individual

defendants, in stating to the plaintiffs in instances where individual purchases were made by the defendants with quick resale at a higher price than the price offered was "all that they could give" or "was all that it was worth" or similar statements, made a misrepresentation as to the prevailing price. The defendant Haslem testified with reference to his purchase from plaintiff Workman; "I contacted a number of people telling them that if they were interested in selling, I was interested in offering the highest price." The bank and the individual defendant employees had developed a market at the Roosevelt Agency of the bank for UDC stock, received inquiries from time to time for stock, and had customers of the bank who were prepared to make purchases from time to time. The defendant bank and the individual defendants were thus entirely familiar with the prevailing market for the shares at all material times.

The record shows in some instances that purchases for resale were made, but the resale price is not disclosed in the record. If in these instances there was a resale at a higher price, there was demonstrated thereby a misrepresentation to the plaintiff concerned as to the prevailing market price. This was a material fact. *List v. Fashion Park, Inc.*, 340 F.2d 457 (2d Cir.).

In *Stevens v. Vowell*, 343 F.2d 374 (10th Cir.), we considered a private action under Regulation 10b-5. The trial court had made findings that critical facts had been concealed from the plaintiff investor and misrepresentations were made to him. The court also specifically found that the plaintiff had there relied upon all the representations made to him by the defendants. These findings were supported by the record. There was no issue on appeal as to reliance, and little as to the fact of misrepresentations. We there stated that it was not necessary to prove common law fraud, but necessary to prove "one of the prohibited actions." This referred to one of the (a), (b) or (c) subsections of the rule. In the cited case the (b) subsection was relied upon and with the reliance established the case was proven. The opinion does not hold that reliance is not required, as the plaintiff urges. It is a basic element of a cause of this nature, and was there shown.

In the case before us the facts of misrepresentation have been shown as to several of the transactions. The record, however, does not contain any evidence relating to reliance by the plaintiffs on the representations of the defendants Gale and Haslem. This is a necessary element of the cause alleged. *List v. Fashion Park, Inc.*, 340 F. 2d 457 (2d Cir.), considers, defines, and requires both materiality of the representations and reliance. See also, 16 U.C.L.A. L.Rev. 404; 63 Nw.U.L.Rev. 434. The plaintiffs allege that certain acts and statements of the defendants were directed to them or were the proximate cause of their damages. Thus the causal connection must be established — that in fact the loss resulted from defendants' acts — a simple and fundamental proposition in such actions for private damages. The plaintiffs' argument refers to several cases where the proceedings were brought by the SEC for enforcement. The matter of reliance was not there considered, but these are from an entirely different position.

The record does not support the trial court's finding of a conspiracy, plan, or scheme to violate any duties owed to the plaintiffs by any of the defendants. The trial court was in error in so finding.

The record shows sufficient evidence of the use of the mails or instrumentalities of commerce by the individual defendants in their violation of Regulation 10b-5 as described above. The testimony as to the use of checks, even on the defendant bank, together with the correspondence with prospective buyers is sufficient. The defendant Haslem purchased in what are referred to as "face to face" transactions with a plaintiff and the certificate was delivered. However, again a check or checks were used and the trial court's finding is supported on this issue although the facts are not well developed.

The pretrial order is not entirely clear as to the inclusion of transactions taking place after August 27, 1964. However, we must agree with the trial court that these properly became trial issues.

The measure of damages has been referred to above briefly. We hold that the trial court was in error in using the value of \$1500 per share in the computation of damages as the evidence does not support such a figure. Also the evidence does not support the finding that the market price was depressed by the defendants. As to the cross-appeals, the evidence as to greater values was entirely speculative, as the trial court concluded.

The measure of damages for breaches of duty under Regulation 10b-5 is the profit made by the defendant on resale of stock purchased from the plaintiffs. If no resale was made or if the resale was not at arm's length, then the measure is the prevailing market price at the time of the purchase from the plaintiffs.

REVERSED and **REMANDED** for further proceedings in accordance with this opinion.

Filed June 19, 1970

OPINION OF THE COURT OF APPEALS IN AUC

PER CURIAM

This is an action wherein the plaintiff seeks to have conveyed to its individual members, "pro rata," a portion of the oil, gas, and minerals underlying the Uintah and Ouray Reservation in Utah.

The plaintiff is an unincorporated association organized for and on behalf of some 490 mixed-bloods who were formerly or may be now members of the Ute Indian Tribe of the Uintah and Ouray Reservation. The Congress enacted Public Law No. 83-671 (25 U.S.C. §§ 677-677aa) which provides for the termination of the trust relationship with the mixed-blood members of this Ute Tribe and for the distribution to them of certain tribal property. The terms of this statute and its execution have been described at some length in the companion cases, Anita Reyes et al v. United States of America, Nos. 40-69 through 44-69, and it is not necessary to describe them further in this opinion.

The termination statute mentions specifically that the interest of the mixed-blood group in the gas, oil, and other minerals and in certain unadjudicated claims was not to be distributed pursuant to the statute. The mixed-bloods' share of this interest constitutes some 27.1686 per cent thereof, the balance being retained by or on behalf of the full-blood members of the Tribe.

The trial court held that it did not have jurisdiction to entertain this action by reason of the fact that it was an unconsented suit against the United States. It

further indicated that the termination statute by the provision above referred to precluded any relief to the plaintiff. The plaintiff took an appeal from the dismissal of its complaint and of its action by the trial court.

On this appeal the appellant urges that the action may be maintained pursuant to 25 U.S.C. § 345. This statutory provision provides that an Indian may bring suit against the United States wherein he seeks to gain possession of an allotment when he has been excluded therefrom, or from any parcel of land to which he is lawfully entitled by virtue of an Act of Congress. The appellant's complaint on its face demonstrates that it does not seek relief on behalf of its members as persons who have been excluded from an allotment or have been excluded from or are entitled to possession of a parcel of land. This section of the statute is obviously intended to provide relief to the Indians entitled to possession of allotments and similar interests. The cases and statutory law have ascribed to the word "allotment" a well recognized meaning. The nature of the interest sought to be protected and secured does not resemble that described in the statute.

By reason of the Termination Act, the mixed-blood group has an undivided 27-per cent beneficial interest in the oil, gas, and minerals, while the full-blood group owns the remainder. The legal title has remained in the United States. The statute of termination directs that no distribution or partition be made of these undivided interests to the mixed-blood members. The statute makes specific provision for the management of these beneficial interests with the Tribal Business Committee representing the full-blood members as to their interest, and an association or corporation representing the mixed-blood group in the management of its portion. It is not an issue in this case as to what organization on behalf of the mixed-blood group has the right of management, and we do not so decide.

The issues presented in this case fundamentally resemble those presented in *Naganab v. Hitchcock*, 202 U.S. 473; *Motah v. United States*, 402 F.2d 1 (10th Cir.); *Harkins v. United States*, 375 F.2d 239 (10th Cir.), and *United States v. Preston*, 352 F.2d 352 (9th Cir.).

The appellant also urges that this action comes within the provisions of 28 U.S.C. §§ 1399 and 2409. However, we find no basis for jurisdiction under these provisions which contemplate an ownership wherein the United States is a joint tenant or tenant in common with the party seeking relief. In the case before us legal title is vested in the United States, but the beneficial title is owned entirely by the two groups of individuals.

Thus on the basis of *Naganab v. Hitchcock*, and the cases cited hereinabove, we hold that the trial court was correct in its determination that it did not have jurisdiction of this action, and the case is therefore **AFFIRMED**.

ORDER DENYING REHEARING IN REYOS AND AUC (identical orders in both cases).

Upon consideration of the Petition for rehearing, it is ordered that said petition be and is hereby denied.

Filed November 12, 1970

SUPREME COURT, U. S.

APPENDIX - EXHIBITS

RECEIVED
FILED
JUL 1 1971
U. S. DEPT. OF JUSTICE

In The
Supreme Court of the United States
October Term, 1970

70-78

~~No. 1551~~

APPELLATED UTE CITIZENS OF THE STATE
OF UTAH, ET AL.

Respondents,

UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED FEBRUARY 9, 1971
CERTIORARI GRANTED APRIL 19, 1971

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Secretary of State's Office

I, CLYDE L. MILLER, SECRETARY OF STATE OF THE STATE OF UTAH,
DO HEREBY CERTIFY THAT the attached is a full, true and correct copy
of the Articles of Incorporation of

UTE DISTRIBUTION CORPORATION



AS APPEARS of record IN MY OFFICE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
AND AFFIXED THE GREAT SEAL OF THE STATE OF UTAH
AT SALT LAKE CITY, THIS Eighth DAY OF

February 1965

BY

Charles B. Miller
SECRETARY OF STATE

Wm. B. Smith
DEPUTY

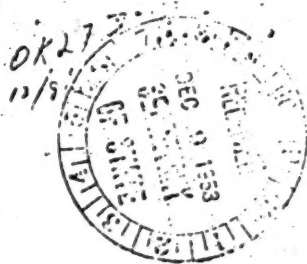


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ARTICLES OF INCORPORATION

OF

UIC DISTRIBUTION CORPORATION



KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned mixed-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, as determined by Public Law 671 - 83rd Congress, approved August 27, 1954, 48 Stat. 505, acting pursuant to the provisions of said Public Law 671, as amended, and in accordance with the Plan for Distribution of the Assets of the Individual Mixed-Blood members of said Tribe, as adopted by said mixed-blood members and approved by the Secretary of the Interior, and pursuant to a resolution adopted by said mixed-blood members, and being desirous of organizing a corporation under the laws of the State of Utah on behalf of said mixed-blood members for the purpose of managing jointly with the Tribal Business

Committee of the full-blood group of said Indian Tribe, as provided in said Public Law 671, all unadjudicated or unliquidated claims against the United States, all gas, oil and mineral rights of every kind, and all other assets not susceptible to equitable and practical distribution between said mixed-blood and full-blood groups and the members thereof, and for the purpose of distributing the net proceeds therefrom, do agree and hereby certify as follows:

ARTICLE I

Name of Corporation

The name of the corporation is Ute Distribution Corporation.

ARTICLE II

Incorporators

The names of the incorporators and their places of residence are:

<u>Name</u>	<u>Residence</u>
Albert H. Harris	Roosevelt, Utah
David H. Hoffman	2232 Taylor Avenue, Ogden, Utah
Lela H. Hardeck	Fort Duchesne, Utah
Benny Hardeck	Fort Duchesne, Utah
Frederic V. Allen	Altonah, Utah

ARTICLE III

Period of Incorporation

This corporation shall exist perpetually unless sooner dissolved or re-incorporated according to law.

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ARTICLE IV

Purpose

The pursuit of business which it is agreed shall be carried on by this corporation shall be to manage jointly with the Tribal Business Committee of

the full-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, pursuant to said Public Law 671, as amended, the aforesaid Plan for Distribution, all unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution to which the mixed-blood members of the said tribe, as defined and determined by said Public Law 671, are now, or may hereafter become entitled pursuant to said Public Law 671 or the laws of the United States and to receive the proceeds therefrom and to distribute the same to the stockholders of this corporation as herein provided.

The powers of this corporation shall be limited to the joint management of such claims and assets and to the receipt and distribution of the income or proceeds therefrom together with such other powers as may necessarily be incident thereto. For the purpose of carrying any of its pursuits, business and powers, this corporation may contract with other individuals, organizations, corporations or entities.

ARTICLE V

Place of Business

The principal place of business shall be at Fort Duchesne, Utah.

ARTICLE VI

Stock

The stock of this corporation shall consist of 4,900 shares of common stock without nominal or par value. The subscribers of the stock of this corporation consist of the 490 mixed-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, whose names appear upon the final rolls of the mixed-blood group of said tribe as determined in accordance with and pursuant to the provisions of said Public Law 671, and each of said 490 members are subscribers to and each shall receive ten shares of stock.

The stockholders, in exchange for said stock, delegate to the corporation and the officers thereof, without further act or deed, authority to manage jointly with the Tribal Business Committee of the full-blood group of said Ute Indian Tribe all unadjudicated or unliquidated claims against the United States, all

gas, oil and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution under said Public Law 671, in which said mixed-blood members have any interest, and to receive the proceeds therefrom and to distribute the same, less any necessary or incidental expense, to the stockholders hereof.

Ownership of stock in this corporation shall entitle the owner thereof to share proportionately with other stockholders in the distribution of the proceeds received by the corporation from said claims, rights and assets, except that fifty per centum of all distributions to any individual mixed-blood member made pursuant to any division or distribution hereunder shall have deducted therefrom any sum or sums of money owed by such mixed-blood member to the tribe, whether due or to become due, unless in the opinion of the Secretary of the Interior said debts are not adequately secured in which event the entire amount to be distributed shall be subject to such offset, and any transferee of such stock shall take the same subject to such provision.

The stock of the corporation is subject to transfer, devise or descent. If a mixed-blood member of said tribe, or any stockholder herein disposes of his stock, he will no longer have a vote or any control in the affairs of the corporation, or be entitled to share in the distribution of the proceeds as hereinbefore provided, unless and until he thereafter again becomes a stockholder in the corporation. Transferees, legatees and heirs of any stock in the corporation shall acquire all rights to which a stockholder is entitled, including voting rights and the right to share in the distribution of the income or proceeds available for such distribution.

ARTICLE VII

Assessability of Stock

The stock of this corporation shall be nonassessable.

ARTICLE VIII

Sale of Stock

If any stockholder who is a member of the mixed-blood group of said Ute Indian Tribe determines to sell or dispose of his stock in this corporation at any time prior to August 27, 1964, he shall first offer it to the members of the tribe, including the mixed-blood and full-blood members thereof, and no sale of any of said stock prior to said date shall be valid unless and until such offer is made to said members of the tribe in such form as may be approved

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by the Secretary of the Interior.

If said offer to sell is not accepted by any of said members of the tribe, the sale thereof to any person not a member of said tribe may then be made, but only for the same or a greater amount and upon the same terms and conditions upon which it was offered to said members, and provided the Superintendent of the Uintah and Ouray Reservation certifies on the stock certificate that said offer to members of said tribe was made in accordance with law and the regulations of the Secretary of the Interior.

All stock certificates issued by this corporation until August 27, 1964, shall have stamped thereon the following:

"Transfer of this certificate at any time prior to August 27, 1964, to a person not a member of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, as defined in Public Law 671 - 83rd Congress, approved August 27, 1954, GS Stat. 363, shall be invalid unless the certificate of the Superintendent of the Uintah and Ouray Reservation is endorsed thereon showing that a prior and proper offer has been made to members of said tribe in accordance with law and the regulations of the Secretary of the Interior."

ARTICLE IX

Officers and Directors

The Board of Directors of this corporation shall consist of five directors, one of whom shall be elected at the annual meeting of the corporation each year. Each director shall be a citizen of the United States, more than twenty-one years of age, and a stockholder in this corporation. Each director shall hold office for five years, and until their successors are legally elected and qualified, unless they sooner resign or are removed as hereinafter provided, except that at the first annual meeting five directors shall be elected, and the director who receives the highest vote shall serve for five years, the director who receives the next highest vote shall serve for four years, the director who receives the third highest vote shall serve for three years, the director who receives the fourth highest vote shall serve for two years; and the director who receives the fifth highest vote shall serve for one year.

The manner of election of said directors shall be by ballot with each share of stock entitled to one vote. Votes for fractions of a share shall not be allowed.

The officers of the corporation shall consist of a President, a Vice-President, a Secretary and a Treasurer. The President, Vice-President and Secretary shall be elected annually by and from the Board of Directors at a meeting of the directors

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called for that purpose, which meeting shall be held immediately after the annual meeting of the corporation. The Treasurer shall be appointed by the Board of Directors under such terms and conditions as may be provided in the by-laws. The Treasurer may, but need not, be a director, and shall not be a member of the Board of Directors unless chosen from one of the duly elected members of said Board. The offices of Secretary and Treasurer may be held by the same person.

Any officer or director may be removed by a three-fourths majority of the remaining members of the Board of Directors for conduct prejudicial to the interests of the company at any meeting of said board called for that purpose, but no officer or director may be removed without first having an opportunity to be heard on his own behalf. Any officer or director may resign his office by giving notice in writing to the Board of Directors.

The stockholders may remove any member of the Board of Directors by a two-thirds (2/3) vote of the stock represented at any annual meeting of the stockholders or at any special meeting thereof called for that purpose.

The names of the officers and directors to serve until the first general election are as follows:

Albert H. Harris	President and Director
David H. Workman	Vice-President and Director
Lula H. Murdock	Secretary and Director
Benny Murdock	Treasurer
Preston V. Allen	Director

ARTICLE X

Board of Directors - Quorum and Meetings

A majority of the Board of Directors shall constitute a quorum and shall be authorized to transact the business and exercise the corporate powers of the corporation.

The Board of Directors shall meet at such times and in such place as may be provided in the by-laws of this corporation, and at such other times as the President, or in his absence, the Vice-President, or a majority of the directors shall determine. Notice of regular or special meetings of the Board of Directors shall be given as provided in the by-laws.

The Board of Directors shall exercise the corporate powers of the corporation, and, subject to such supervision by the Secretary of the Interior as is otherwise required by law, shall manage jointly with the Tribal Business Committee

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of the full-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, all unadjudicated or unliquidated claims against the United States, all gas, oil and mineral rights of every kind and all other assets not susceptible to equitable and practicable distribution under said Public Law 671, shall divide with said full-blood members the net proceeds therefrom as provided in said Public Law 671, and shall distribute or cause to be distributed the share of the mixed-blood members to the stockholders hereof, and shall do any and all things that may be necessary for the pursuit of the business and affairs of the corporation.

ARTICLE XI

Vacancies

The Board of Directors shall fill all vacancies that may occur by death, removal or resignation of any director or other officer. Any person appointed to fill a vacancy on the Board of Directors shall hold office until the next annual meeting of the stockholders, at which time the vacancy shall be filled by election.

ARTICLE XII

Stockholders Meetings

The first annual meeting of the stockholders of this corporation shall be held on the third Saturday of July, 1959, and annual meetings thereafter shall be held on the third Saturday in July of each year at 2:00 o'clock P.M., in Fort Duchesne, Utah, or at such other hour or place as the Board of Directors shall designate.

Special meetings of the stockholders may be called by the President or by any three directors or by any number of stockholders owning not less than one-third (1/3) of the outstanding stock, and such special meetings may be held at such time and such place as shall be designated in the call.

The Secretary shall give ten days' notice of each annual meeting and ten days' notice of any special meeting of the stockholders. Such notice shall be given as provided in the by-laws of the corporation. Notices of special meetings shall recite the business proposed to be transacted thereat, and none other than the business so stated shall be transacted at such meetings. Any stockholder may in writing waive notice of any stockholders' meeting, annual or special.

The stock represented at a meeting whatever its amount shall constitute a quorum and every question or election thereat shall be decided by a majority of the votes cast.

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ARTICLE XIII

By-Laws

There shall be made such by-laws, rules and regulations, not inconsistent with law or other corporate rights and vested privileges, as may be necessary to carry into effect the objects and pursuits of this corporation, and such by-laws, rules and regulations shall be made and adopted and may be amended, by the Board of Directors.

ARTICLE XIV

Debts of Corporation

The private property of the stockholders of this corporation shall not be liable for the debts and obligations of this corporation.

ARTICLE XV

Amendments

These articles of incorporation may be amended at any time in the manner as provided by law.

IN WITNESS WHEREOF, we have hereunto set our hand this 13th day of
November, 1950.

Albert H. Harris

David H. Workman

Lula H. Murdock

Benny Murdock

Preston V. Allen

STATE OF UTAH)
: SS.
COUNTY OF UTAH)

On the 13th day of November, 1950, personally appeared to me
Albert H. Harris, David H. Workman, Lula H. Murdock, Benny Murdock and Preston
V. Allen, the signers of the foregoing Articles of Incorporation, who duly
acknowledged to me that they executed the same.

My Commission Expires:
March 10, 1951

James A. [Signature]
Residing at: Hatch, Utah

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STATE OF UTAH)
: SS.
COUNTY OF UTAH)

Albert H. Harris, Lula H. Murdock and Benny Murdock, being first duly
sworn, depose and say: That they are three of the incorporators who entered
into and signed the foregoing Articles of Incorporation, that they bona fide
intend to commence and to carry on the business mentioned in the foregoing

Articles of Incorporation, that said corporation is organized pursuant to the provisions of Public Law 571 as amended and that the stock of said corporation shall be issued pursuant to said Public Law to the 490 members of the mixed-blood group of said Ute Indian Tribe.

Albert J. Klammer
John W. Mendenhall
Bernard J. Mendenhall

Subscribed and sworn to before me this 17th day of November, 1958.

Joseph A. Mendenhall
Notary Public, Utah
Residing at:

My Commission Expires:
March 10, 1961

1343



RECEIVED JUL 23 1958

JUL 23 1958

AGREEMENT

AGREEMENT

THIS AGREEMENT, made and entered into at Roosevelt, Utah, as of December 31, 1958, by and between FIRST SECURITY BANK OF UTAH, N. A., Party of the First Part, hereinafter sometimes referred to as the "Bank", and UTE DISTRIBUTION CORPORATION, a Utah corporation, Party of the Second Part, hereinafter sometimes referred to as the "Corporation",

WITNESSETH:

The Corporation has been organized for the purposes set forth in its Articles of Incorporation, a copy of which is attached hereto and made a part hereof. The Corporation requires a Stock Transfer Agent; a Depository for its funds; an office in which to keep its records and books of account and where its business may be transacted; and an agency to keep its books, disburse its funds and otherwise assist it to carry into effect its corporate purposes. The Corporation has requested the Bank to assist them in these matters and the Bank is ready, able and willing to assist them on the terms and conditions herein set forth.

In consideration of the premises and of the mutual promises herein contained, the parties agree as follows:

1. The Bank will be Stock Transfer Agent for the Corporation. The Corporation will supply to the Bank such certified corporate resolutions in substance and form required by the Bank from Corporations for which it acts as Transfer Agent in its usual course of business. A copy of the form of such resolutions is attached hereto and made a part hereof. The Corporation will supply the Bank such other documents as the Bank reasonably may require from time to time for its use as such Transfer Agent.

2. The Bank will receive and deposit in the Bank all funds paid or delivered to it by the Corporation. The Bank will keep such funds identified as belonging to the Corporation and will use said funds for the purposes of the Corporation.

3. The Bank will keep books of account for the Corporation in accordance with usual bookkeeping and accounting procedures. In this connection, the Bank will receive funds, issue checks against said funds, receive and hold documents, prepare and mail or otherwise deliver statements and reports, and generally conduct the business for the Corporation.

4. The Corporation will instruct the Bank from time to time concerning the Bank's duties. The Bank, at its election, may require from the Corporation such written, certified corporate resolutions and legal advice as it may consider

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necessary or appropriate in connection with its functions under this agreement. If, at any time, the Bank is uncertain as to its duties in connection with any matter, it may refrain from any action in connection therewith until said written, certified corporate resolutions and legal advice are received by it.

5. The Bank agrees to be diligent and to put forth its best efforts in the performance of its duties hereunder. The Bank shall incur no liability in following the instructions of the Corporation or the advice of Corporation's legal counsel or in the performance of its duties under this contract, except for liability arising out of the Bank's bad faith.

6. The Corporation will save the Bank harmless from and defend it against any claim or demand asserted against the Bank, arising out of or connected with the Bank's functions under and performance of this agreement as aforesaid, except as specified in paragraph 5 hereof.

7. At this time the parties cannot ascertain the value of the services, space, equipment, supplies and facilities to be rendered and furnished by the Bank under this agreement. The Bank will perform this agreement and keep account

of its costs in so doing for a period of six months next following the date when it begins its services hereunder. At the end of said six months' period the Bank will disclose to the Corporation its costs for such period, and the parties, in view of such costs, will then agree upon a fair and reasonable amount, but not less than said costs, which the Corporation will pay forthwith to the Bank for such six months' period. Thereafter, the Bank shall be compensated by the Corporation upon a basis to be agreed upon by the parties in view of the experience of the parties during said six months' period. It is understood, however, that expenses, purely personal in nature, such as leasing of shares, transfer of shares and any taxes or excises incident thereto shall be borne by the person for whom such service is rendered or cost incurred, and not by the Corporation.

8. Any party to this agreement may cancel the same upon thirty days prior written notice to the other party; provided that the party cancelling the agreement, if the Corporation, shall pay to the Bank the Bank's reasonable charges for the services theretofore rendered to the cancelling Corporation; and provided, further, that if the Bank cancels the agreement, it shall render an account to the Corporation and deliver to the Corporation all the property and the records

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the Bank holds for such Corporation upon receiving from such Corporation reasonable compensation for the services theretofore rendered.

FIRST SECURITY BANK OF UTAH, N.A.

By

Max Thomas
Sr. Vice Pres.
Party of the First Part

UTE DISTRIBUTION CORPORATION

By

David H. Workman
Vice Pres.
Party of the Second Part

1403

FIRST SECURITY BANK OF U

NATIONAL ASSOCIATION

UNITA & CURRY AGENCY
FORT DUNCAN, UTAH

JAN 17 8 22 AM 1956

January 16, 1956

Mr. A. E. Harris, Executive Director
Affiliated Ute Citizens
c/o Uintah and Ouray Agency
Fort Duncane, Utah

PLAINTIFF'S
EXHIBIT

19
C-37-65

Dear Mr. Harris:

Reference is made to our meeting with representatives of your group on January 7, 1950, at which time we discussed ways in which the First Security Bank of Utah, N. A. might be of service to the Affiliated Ute Citizens.

It is our understanding that a corporation would be organized which would hold title to grazing lands suitable for the grazing of cattle, and another corporation would be organized which would hold title to land suitable for the grazing of sheep. Shares of stock would be issued to members of your group, which would entitle them to graze a certain number of cattle or sheep, as the case might be. These shares could be sold by the individuals owning them or the grazing rights represented by the shares could be assigned to others. In order to obtain funds to operate the corporations it would be necessary to levy assessments on the shares of stock outstanding.

The suggestion was made that our Trust Department might act as transfer agent for the capital stock of these companies. This would mean that we would be responsible for keeping a record of all outstanding stock certificates. We would handle all transfers of stock, whether by reason of sale or because of the death of the owner, and it would be our duty to see that these transfers were properly made. Because of its technical nature, the transfer of stock would be handled by our Trust Department in Salt Lake City, where we have people specially trained for this type of work. However, there is no reason why the certificates could not be presented to our Roosevelt Office for forwarding to Salt Lake City for transfer.

We assume, of course, that it would be necessary to keep separate records for each corporation. For each corporation there would be a minimum annual charge of \$187.50, which would include maintaining the accounts

1404

1-14-58

of 250 stockholders. For each account in excess of 250 there would be an annual charge of 30¢, which would be paid by the corporation. In addition, there would be a charge of 30¢ for each certificate issued, which could be collected from the person requesting its issuance if the corporation so desired. Where certificates are mailed a small charge is made, usually of 15¢ per certificate, to cover postage and insurance costs. For any special services, such as furnishing stockholders lists, a minimal charge would be made to cover the clerical work involved.

If the corporation wished, the bank could handle the mailing of assessment notices and the collection of assessments. For convenience of the stockholders, there is no reason why payment of the assessment could not be made at our Roosevelt Office. If so desired, it would seem that we could keep all of the financial records, relating to the collection of assessments and payment of expenses of the corporation. The charge for these services would be such as agreed upon between your Directors and the bank and would be based on the work involved.

It was mentioned above that some stockholders might wish to sell their shares or assign their voting rights. Our office at Roosevelt might be of service in this connection, particularly in the case of stockholders who do not live in the area. The corporations would not be involved in this, as the bank would be acting for the individual stockholders.

In addition to the corporations mentioned above, it is our understanding that a third corporation would be formed, the stock of which would represent interests in judgments and mineral rights. Our bank could act as transfer agent for the stock of this corporation the same as for the other corporations. We could also handle the distribution to stockholders of proceeds of judgments or amounts received for royalties. uAC

We did appreciate the opportunity of discussing with your representatives ways in which we might be of service. We realize, of course, that you will have additional questions, and further meetings will undoubtedly be necessary, which could be arranged for your convenience.

Very truly yours,

Ralph D. Cowan
Vice President

RDC:bbg

cc: Mr. Elmer Mackford, President, Affiliated Ute Citizens
Mr. Darrell Fleming, Superintendent, Uintah and Ouray Agency
Mr. John S. Boyden, Attorney at Law

1405

DEC 10 4 4 PM 1958

RESOLUTION NO. 58-05

Uintah and Ouray Agency
Fort Duchesne, Utah

November 1, 1958

BE IT RESOLVED BY THE GENERAL MEMBERSHIP OF THE AFFILIATED UTE CITIZENS OF THE STATE OF UTAH THAT: After giving due consideration to the Articles of Incorporation of the Ute Distribution Corporation, we do hereby accept such Articles and the Ute Distributive Corporation as it is thus written.

FURTHER, that these articles of incorporation may be amended at any time in the manner as provided by law, and

FURTHER, that the incorporators intend to commence and to carry on the business mentioned in the said Articles of Incorporation, that said corporation is organized pursuant to the provisions of Public Law 671 as amended and that the stock of said corporation shall be issued pursuant to said Public Law to the 490 members of the mixed-blood group of said Ute Indian Tribe.

Albert Harris
Albert Harris, Elected Chairman of
the Meeting.

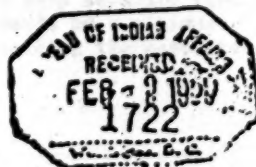
C E R T I F I C A T I O N

I hereby certify that the above resolution was adopted by the General Membership of the Affiliated Ute Citizens of the State of Utah at a Special meeting held at Roosevelt, Utah on the 1st day of November, 1958 by a vote of 42 for and 5 against.

Approval: Recommended:

Loyd H. Hildner
Secretary of the Meeting

Samuel Heming
Superintendent
12-14-58



1412

BOYDEN, TIBBALS, STATEN AND CROFT

LAW OFFICES

SUITE 2 - UTAH BUILDING

201 SOUTH STATE STREET

SALT LAKE CITY 11, UTAH

**JOHN S. BOYDEN
ALLEN H. TIBBALS
EARL P. STATEN
BRYANT H. CROFT**

**PLAINTIFF'S
EXHIBIT**

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C-34-65

July 22, 1959

**First Security Bank of Utah
Salt Lake City, Utah**

Gentlemen:

You have been retained as transfer agent for the Ute Distribution Corporation. You are also probably to act as trustee for the minor children of the mixed-blood members of the Ute Indian Tribe.

I call to your attention a paragraph taken from the minutes of said corporation at Fort Duchesne, January 12, 1959 at 2:30 P.M., which is as follows:

"The Board of Directors by unanimous vote directed Attorney John S. Boyden to write a letter to the First Security Bank of Utah, N. A., asking said bank, as transfer agent, to discourage the sale of stock of the Ute Distribution Corporation by any of its stockholders and to emphasize and stress to the said stockholders the importance of retaining said stock."

This direction is self-explanatory and we trust you will impress upon anyone desiring to make a transfer that there is no possible way of determining the true value of this stock. It simply represents their distributive share of the remaining funds to be derived from the balance of oil, gas and minerals of the reservation, the proceeds from any judgments to be obtained in the litigation against the United States and any other assets that were not susceptible to equitable or practicable distribution under the law which provided for the separation of the property of the mixed-blood members from the Ute Indian Tribal assets.

Because of the peculiar nature of this corporation, the Board, by way of by-laws or otherwise, contemplates discouraging or prohibiting the mortgaging or pledging of this stock. There is no objection to assigning the proceeds to be derived from the corporation, but to jeopardize the ownership of the stock may result in very unfair practices. You should so advise any attempted borrower or lender.

I also call to your attention that both the directors and the stockholders have been informed that the stock of the corporation will not be delivered to each stockholder but will be delivered to you. You, in turn, will set up

1421

a file to hold these certificates and will issue receipts to the various stockholders. This procedure is followed because of some rather unfavorable experiences had in the Indian service with the loss of valuable instruments.

If you have any question in regard to these instructions, do not hesitate to communicate with me.

Yours very truly,

JOHN S. HOVLIN

JSH:bs

1422

NAME OF AGENCY BUREAU OF INDIAN AFFAIRS WASHINGTON D.C. CENTRAL OFFICE	PRECEDENCE ACTION: INFO: TYPE OF MESSAGE <input type="checkbox"/> SINGLE <input type="checkbox"/> BOOK <input type="checkbox"/> MULT-ADDRESS
ACCOUNTING CLASSIFICATION	
THIS BLOCK FOR USE OF COMMUNICATIONS UNIT	

CLASSIFICATION STANDARD FORM 14 REV. MARCH 13, 1957 GSA REGULATION 24-303.54
TELEGRAPHIC MESSAGE OFFICIAL BUSINESS U. S. GOVERNMENT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters) THIS COL. FOR AGENCY USE

**PLANTIFF'S
EXHIBIT**
37
C-39-65

AUGUST 24, 1960

AREA DIRECTOR
PHOENIX AREA OFFICE
PHOENIX, ARIZONA

REURLET AUGUST 12 CONCERNING REGULATIONS 25 CFR 243, IT IS OUR VIEW THAT THE OFFERS REQUIRED TO BE MADE BY SECTION 15 OF THE ACT OF AUGUST 27, 1954 APPLIES TO THE UTE INDIAN TRIBE. THE RIGHTS OF THE MEMBERS INDIVIDUALLY EXTENDS TO THEM WHEN ANY NUMBER OF THEM ARE ACTING COLLECTIVELY. THE VIEW YOU HAVE TAKEN DOES NOT TAKE NOTE OF SECTION 243.6 WHICH CONTEMPLATES THAT THE SUPER-INTENDENT WILL GIVE NOTICE OF OFFERS TO THE TRIBAL BUSINESS COMMITTEE OF THE TRIBE, MEANING THE UTE INDIAN TRIBE. DEALING IN RANGE COMPANY STOCK PRIOR TO ADOPTING THE REGULATIONS AND WITHOUT REQUIRED OFFERS ARE INVALID. WE DO NOT SHARE YOUR APPARENT CONCERN REGARDING REPORTED PURCHASES FOR OUTCOME OF ANY POSSIBLE SUIT.

(would also apply to WDC stock)

ROGER ERNST

PAGE NO. NO. OF PAGES

NAME AND TITLE OF ORIGINATOR (Typed)	ORIGINATOR'S TEL. NO.
DATE AND TIME PREPARED	
SECURITY CLASSIFICATION	
I certify that this message is official business, is not personal, and is in the interest of the Government.	
(Signature)	

1506

UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

PHOENIX AREA OFFICE

P. O. BOX 7007

PHOENIX, ARIZONA

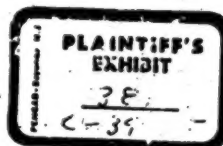
8 29 11 1960

November 1, 1960

Mr. M. M. Zollar

Supt., Uintah and Ouray Agency

Dear Mr. Zollar:



This has reference to your October 27 letter concerning alleged sale of stock in the Affiliated Ute range companies.

All persons must be notified, of course, that any effort to dispose of the stock outside the regulations of the Secretary is without force and effect. The converse is likewise true, that any dispositions in accordance with the Secretary's regulations are legal. This leaves unresolved the question of the circumstance wherein valuable consideration has changed hands on the assumption range company stock could be sold under other procedures than those set forth by the regulations.

Under the situation last cited above, it is obvious no one can sell for valuable consideration something which he is unable to deliver. While the substance of the proposed contract for the sale of range stock outside the regulations would be illegal, it would likewise be illegal for anyone to accept a consideration based upon such a sale. It would appear, therefore, that if Mrs. Wanda Hackford did accept money from Fontella Hackford, purportedly to cover the transfer of stock, Mrs. Wanda Hackford should repay Fontella Hackford such money. To do otherwise would be accepting funds under false pretenses and would be as illegal as would be the purported transfer of range stock.

Sincerely yours,

J. M. Overland

Area Director

will apply
due to
UDC stock
still

1507.

C
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UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON 25, D. C.

In reply refer to
J-56-1224-9



Memorandum

November 30, 1956

To: Commissioner of Indian Affairs

From: Acting Assistant Solicitor, Indian Legal Activities

Subject: Interpretation of the word "tribe" as used within the Act of August 27, 1954 (68 Stat. 868)

You request our interpretation of the word "tribe" as frequently used in the Act of August 27, 1954, P. L. 671, 68 Stat. 868, in view of the provision of Section 5 that, after publication of the final roll, the tribe "shall thereafter consist exclusively of full-blood members." You refer to the resolution adopted by the board of directors of the Affiliated Ute Citizens of the State of Utah, which assumes that the Secretary of the Interior's required protection of minor members of the tribe (sec. 28) thereafter applies only to "full-blood members."

You also question the meaning of "tribe" in Section 15, which requires that a mixed-blood member who wishes to dispose of certain property**** shall first offer it to the members of the tribe***.

"Tribe" is defined as "Ute Indian Tribe of the Uintah and Ouray Reservation, Utah." (Section 2(a)). "Full-blood" means a member of the tribe who possesses one-half degree of Ute Indian blood and a total of Indian blood in excess of one-half, excepting those who become mixed bloods by choice under the provisions of section 4 hereof." (Section 2(b)). "Mixed-blood" means "a member of the tribe who does not possess sufficient Indian or Ute Indian blood to fall within the full-blood class as herein defined, and those who become mixed-bloods by choice under the provisions of section 4 hereof." (Section 2 (c)). (Underscoring added).

Section 8 provides for the roll "of full-blood members of the tribe" and for a roll of "the mixed blood members of the tribe." (Underscoring added). After publication of the final rolls, the "mixed-blood" group of Indians are still considered as "members of the tribe" within this definition. For example, section 18 states that "the laws of the United States with respect to probate of wills, determination of heirship, and the administration of estates shall apply to the individual trust property of mixed blood-members of the tribe until Federal supervision is terminated. * * *"

1518

Sections 19, 20, and 21 reserve certain rights and privileges of "the tribe", and not only to the full-blood organization and its members after publication of the final roll. Section 25 refers to "each individual mixed-blood member of the tribe"; and section 24 refers to "the business committee of the tribe representing the full-blood group thereof", also recognizing that "tribe" refers to both groups. Again, in section 14 and 15, the Act distinguishes a "member of the mixed-blood group" from "members of the tribe". In fact, throughout there is a considered use of the expressions "members of the tribe", "mixed-blood members of the tribe", and "full-blood members of the tribe", to distinguish the three classes.

The sentence "mixed-blood members shall have no interest therein except as otherwise provided in this Act", follows the sentence in section 5, to which you refer, that the "tribe shall consist" exclusively of full-blood members after the tribal rolls have been published. In spite of the somewhat confusing language of the first sentence of this section, the second sentence clearly implies that the mixed-blood members continue to have a tribal relationship, i. e., "an interest therein in the tribe" as * * * provided in this Act." In fact, this is so. The "full-blood members" are the only persons thereafter recognized on the full-blood tribal roll, but the mixed-blood members of the tribe continue to have tribal membership for certain purposes set forth in the Act. You will also note that the rolls referred to in the first sentence are the rolls "of the full-blood members of the tribe" and of the "mixed blood members of the tribe."

It seems reasonably sure, therefore, that the word "tribe" as used in sections 15 and 22, and elsewhere throughout the Act, refers to both "full-blood" and "mixed-blood" members, unless specifically limited to one or the other of these classes of tribal members.

/s/ Franklin C. Salisbury
Acting Assistant Solicitor
Indian Legal Activities



UNITED STATES
FORT

DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

JUL 22 6 37 AM
Phoenix Area Office
P. O. Box 7007
Phoenix 11, Arizona

IN REPLY REFER TO:

Real Prop. Mgmt.
Acq. & Disp.
310 - U60

File
JUL 18 1965
File



Mr. M. M. Zollar

Supt., Winch & Quay Agency

Dear Mr. Zollar:

Our discussion with you concerning the sale of shares by the withdrawn members from the Ute Tribe during your recent visit has been reviewed with other members of the staff. The law requires that the shares be advertised so that the Ute Tribe may have an opportunity to purchase them if they wish.

It is felt that sales of stock should be advertised once every three months so that we will comply with the law and also offer a service to the people wishing to sell their shares. This will be a burden on the staff, but we should offer every opportunity for the people owning the shares to secure the best price possible and still fit the advertising in with our workload.

You are authorized to advertise the shares for sale once every three months at such times during that three months' period as you feel there is sufficient interest and enough shares of stock available for sale so that the shares may be profitably sold.

Sincerely yours,

James H. Miller
Assistant Area Director

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TRUST DEPARTMENT
FIRST SECURITY BANK OF UTAH
NATIONAL ASSOCIATION
MAIN AT FIRST SOUTH OFFICE
SALT LAKE CITY 1, UTAH

November 15, 1963

Mrs. Lena D. Sixkiller, President
Ute Distribution Corporation
Fort Duchesne, Utah

Dear Mrs. Sixkiller:

For your information we are enclosing copy of our letter to Paul Murphy, Manager of our Roosevelt Office, from which you will note we have forwarded to him certificates issued in connection with the recent sale of Ute Distribution Corporation Stock. You will further note the certificates must be signed by the President and Secretary of Ute Distribution Corporation and the Corporate Seal must be affixed to each certificate. We would appreciate it if you would take care of this at Mr. Murphy's Office.

Enclosed for your records are copies of our Stock Transfer Journals on which we have recorded a description of the certificates issued as well as a description of the certificates cancelled. The certificates were transferred in accordance with instructions furnished by Mr. M. N. Zellar, Superintendent of the Utah and Curay Agency, in his letters of November 8 and 12, 1963. The necessary documents to support the transfers were enclosed with his letters.

In accordance with your notice that an assignment had been made of payments due Loren Fred La Haze on his Ute Distribution Corporation Stock, we have held up a transfer of his stock which he sold to Clyde R. Murray.

In accordance with a letter from Mr. Merrill J. Millett, Assistant Manager of your Office, we have transferred stock from the name of Leonard R. Hurson, as we understand he does not owe the bank any money at the present time, an assignment by him having been made to secure a loan.

We have also transferred shares sold by Richard H. Curry as Mr. Millett has informed us that one-half of the monies he received from the sale were paid to his wife. We understand that you will get a release from his wife for record purposes.

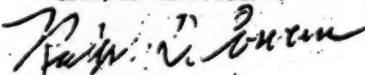
We have held up two of the transfers which were requested in Mr. Zellar's letter of November 12, 1963, as you had advised him of assignments made by those two individuals for distributions to them on their stock. These are Clarence L. Harris, Sr., who had made an assignment to

Page 2
Mrs. Lena D. Sixkiller
November 18, 1963

the LDS Hospital and Anita Reed Reyes who had made an assignment to our Trust Department for monies advanced for the purchase of a home out of her children's funds. We will endeavor to work out some kind of an arrangement with Mrs. Reyes so that the shares sold can be released.

Yours very truly,

FIRST SECURITY BANK OF UTAH
National Association



Ralph D. Cowan
Vice President

RDC:hup
Enclosures

cc: Mr. W. M. Zella
Mr. Paul Murphy



TRUST DEPARTMENT

First Security Bank of Utah

NATIONAL ASSOCIATION
MAIN AT FIRST SOUTH OFFICE

SALT LAKE CITY, UTAH

August 5, 1963



Mr. M. M. Zollar, Superintendent
Uintah and Ouray Agency
Fort Duchesné, Utah

Dear Mr. Zollar:

There has been delivered to us copy of your notification to Mrs. Elizabeth B. Poowegup that no acceptance was made by a member of the Tribe of her offer to sell 10 shares of Stock of the Ute Distribution Corporation and that she may, therefore, sell this stock to any person for an amount not less than \$5,000.00. There has also been delivered to us a copy of an Affidavit to the effect that she has received \$5,000.00 from Dick E. Bastian of Roosevelt, Utah, in full payment for the stock.

The notification to Mrs. Poowegup invites her attention to regulations requiring certification by the Superintendent in the sale of the corporate stock and that such certificate can be issued by your office only upon being furnished with certified proof that she has received no less than the price asked for the shares offered. The stock certificate itself also provides that the transfer of the certificate shall be invalid unless the certificate of the Superintendent of the Uintah and Ouray Reservation is endorsed thereon, showing that a prior and proper offer has been made to members of the Tribe in accordance with the law and regulations of the Secretary of the Interior. It would appear, therefore, that as Transfer Agent for the Ute Distribution Corporation, we could make no transfer of the stock until your certificate referred to above has been stamped on the stock certificate, or at least until we had received from you a certificate to be attached to the stock certificate.

Since this is the first request we have received for a transfer of the stock, we thought that we had better check with you as to the procedure we should follow. In other words, should we send to you for endorsement the stock certificate which is to be transferred, or can you send us your certificate to be attached to it?

Yours very truly,

Ralph D. Cowan
Vice President

RDC:bmp

MEMBER FIRST SECURITY CORPORATION SYSTEM
LARGEST INTERMOUNTAIN BANKING ORGANIZATION

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TRUST DEPARTMENT
FIRST SECURITY BANK OF UTAH
NATIONAL ASSOCIATION
MAIN AT FIRST SOUTH OFFICE
SALT LAKE CITY 1, UTAH

*Instructions
on Transfer of
stock*

See 75-1-1



September 23, 1933

Mrs. Lena B. Siskiller, President
Ute Distribution Corporation
Fort Duchesne, Utah

Dear Mrs. Siskiller:

Reference is made to our discussion with members of your Board of Directors as to the procedure to be followed when a stockholder of Ute Distribution Corporation wishes to sell his stock. We believe the following procedure would be satisfactory:

1. He would notify the Agency of his desire to sell all or a part of his stock using the form provided to indicate the price at which the stock is offered.
2. Notice of this offer would be posted by the Agency as required by the Regulations. It would be our suggestion that the notice should be posted for a period of thirty days if the Regulations can so provide.
3. The Board of Directors of Ute Distribution Corporation should see that they are informed by the Agency when stock is offered for sale so that they can contact other stockholders who might be interested in buying the stock. We, as Trustees for the miners, would also like to be notified.
4. If an offer to sell is accepted by a member of the Tribe, he must make a deposit of at least 10% of the purchase price, paying any balance due within thirty days. It is our suggestion that payments be made through the Agency.
5. When the offer is accepted by a member of the Tribe, a stock power in the form enclosed should be executed by the selling stockholder assigning the shares sold to the purchaser. This stock power should be deposited with the Agency. The signature of the selling stockholder should be guaranteed by a bank or witnessed by an official of the Agency.

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6. When the stock has been paid for in full, the stock power should be forwarded to us by the Agency with a letter of transmittal listing the name and address of the individual or individuals to whom new certificates are to be issued. This letter should be accompanied by a remittance to cover our transfer fee of \$1.00 for each new certificate issued and Federal Stock Transfer Tax at the rate of \$0.03 for each share sold.
7. We will then proceed to issue new certificates as instructed. If all shares are not sold, a new certificate for the unsold shares will be issued in the name of the selling stockholder.
8. All new certificates issued will be forwarded to our Roosevelt Office to be signed by the proper Officers of Ute Distribution Corporation and to have the seal of the Corporation affixed.
9. The certificates will then be returned to our Office to be held until August of 1964.
10. If the person who accepts the offer does not pay all of the purchase price within thirty days as required, the stock power will be returned to the selling stockholder.

In the event the offer to sell is not accepted by a member of the Tribe within the time permitted by the Regulations, then it would appear the following procedure should be followed:

1. The stockholder offering his stock for sale will be notified by the Agency that his offer has not been accepted by a member of the Tribe and that he is free to sell his stock at a price not less than that indicated in his offer to sell.
2. When he has found a buyer he will furnish the Superintendent with evidence satisfactory to the Superintendent that a sale has been made at a price not less than that indicated in the offer to sell, and will deposit with the Superintendent a stock power assigning the shares sold to the purchaser.
3. The Superintendent will then forward the stock power to us furnishing the name and address of the purchaser and endorsing his certificate to the effect that the selling stockholder has first offered his stock to members of the Tribe as required by Law and the Regulations of the Secretary of the Interior. Remittance for transfer fees and stock transfer tax must also be made.
4. We will then issue the certificate to the purchaser for the shares sold, issuing another certificate to the selling stockholder for any shares not sold.

Mrs. Lena B. Sickiller - Ute Distribution Corporation
September 23, 1963

5. As in the case of stock sold to members of the Tribe, the new certificates will be mailed to our Roosevelt Office for signing by the Corporation and affixing the seal.
6. The certificate issued in the name of the purchaser may then be delivered to him upon taking his receipt to be forwarded to us for our files.

In the case of a deceased stockholder, before his certificate can be released we must be furnished either with a certified copy of a Decree of Distribution of a State Court or with a photo copy of an order Determining Heirs entered by the Office of the Examiner of Inheritance of the Department of the Interior. We must, of course, be furnished with the addresses as well as the names of the persons to whom the new certificates are to be issued. A remittance to cover a transfer charge of \$1.00 for each certificate issued and of \$0.03 for each share to be transferred must also be made. If the stock is to be transferred pursuant to a Decree of Distribution of a State Court, we should also have a stock power signed by the Executor or Administrator. From this point on the procedure will be the same as in the case of shares sold.

Whenever any certificates are transferred, we will send you a copy of our Stock Transfer Journal so that you can keep your records up to date. We, in turn, would like to be furnished with the names of those who have made assignments of distributions due them on their shares of stock. The Superintendent of the Agency should also be notified of these assignments.

It is our intention to refuse to issue certificates for fractional shares of stock. Therefore, in the case of decedents the heirs should agree among themselves with respect to any adjustments that must be made to avoid fractional shares.

Three extra copies of this letter are enclosed for your use and a copy is also being sent to Mr. Zollar.

Please feel free to contact us at any time you have any questions in regard to the transfer of your stock.

Yours very truly,

FIRST SECURITY BANK OF UTAH
National Association

Philip B. Cohen
Philip B. Cohen
Vice President

cc: Mr. W. H. Zollar

enclosures

1531



First Security Bank of Utah

NATIONAL ASSOCIATION

FOURTH SOUTH OFFICE

SALT LAKE CITY, UTAH

October 19, 1960

PLAINTIFF'S
EXHIBIT

46

C-39-60

Mr. H. A. Zollar, Superintendent
Utah and Ouray Agency
Fort Duchesne, Utah

Dear Mr. Zollar:

Referring to our telephone conversation, we are sending you, under separate cover, a supply of stock powers to be used in connection with the sale of Antelope Shew Range Company and Rock Creek Cattle Range Company stock. We understand that you will need 110 stock powers for stock of each corporation. We are forwarding a few extra in case some should be spoiled.

We are enclosing a sample stock power which we have filled out in the customary way. You will note that the certificate number and the number of shares has been filled in. We have not filled in at the top the name of the one to whom the stock is assigned. If a stock power is obtained before it is known who will purchase the stock when the sealed bids are opened, then the name on the transference should be left blank. However, if the stock power is not obtained until after it is known who will purchase the stock, then the name of the transferee can be filled in. The remainder of the spaces which are left blank need not be filled in.

We suggest that the name of the one who owns the stock be typed in under the line for his signature. If the stockholder is in your area, then he should sign in the presence of an official of the Agency, who should sign in the space provided in the lower left hand corner of the stock power. In the event the stock power is signed by mark, then there should be two witnesses.

If the stockholder does not live in your area, so that his signature cannot be witnessed by an official of the Agency, then his signature should be guaranteed by mark where he is known. You will note that we have placed on the bottom of the stock power an impression of a signature guarantee stamp which we customarily use.

It is, of course, unnecessary for you to make out any stock powers for stock held by us as Trustee; as we can take care of the assignment of these certificates in our office.

It is my recollection that we had some discussion with Mr. Boyden as to whether the issuance and transfer of stock of these companies was exempt from Federal Stock Transfer Tax. If it is subject to tax, then it would be at the rate of 4¢ for each \$100.00, or major portion thereof, of the value of the stock.

MEMBER FIRST SECURITY CORPORATION SYSTEM
LARGEST INTERCITY BANKING ORGANIZATION

1532

10-19-62

transferred. It is customary for this expense to be paid by the seller. It would seem, therefore, that if a tax is due the buyer might deduct the tax from the check issued to each seller and then remit to us one check for the total tax due.

As you were advised over the telephone, John Boyden had issued all of the certificates for stock of both of the companies, and turned them over to us. The certificate number issued to each member was the same as his roll number. The certificates have not been signed by the officers of the corporations and arrangements should be made for the President and Secretary of each corporation to come to Salt Lake City and execute them.

It is our understanding that our bank will act as Transfer Agent for stock of both companies, but we have not as yet been furnished with copies of the resolutions appointing us.

We would appreciate your keeping us advised immediately of any developments in the sale of the stock.

If you have any questions, please feel free to write us.

Very truly yours,

Ralph D. Cowan
Vice President

RDC:bbg

1533

March 7, 1964

Mr. Ralph D. Cowan
First Security Bank of Utah
P. O. Box 1289
Salt Lake City, Utah



Dear Sir:

I am writing you in regard to two shares of stock in the Ute Distribution Corporation represented by Certificate No. 601 which I recently purchased, and also in regard to my own ten shares (Certificate No. 267) which were issued to me as an original stockholder. I now have twelve shares of stock and two certificates in the Corporation. The bank in Roosevelt refused to release the two shares I recently purchased. Now, as a result of this refusal, I am asking and demanding that all twelve shares be released to me.

When I was the President of the Ute Distribution Corporation, the five Board of Directors instructed you to give all stockholders their certificates upon demand. Since then, I have found that business is being conducted contrary to these explicit instructions.


In your letter to Mr. Paul Murphy, Manager of the First Security Bank in Roosevelt, Utah, dated March 4, 1964, you said and instructed, quote: "...you may deliver the certificates issued to the non-members of the tribe.", unquote.

Since when did I become a member of the Ute Indian Tribe? Through Public Law 671, I was taken away from the Ute Indian Tribe. If you can prove I am a member of the tribe, which I surely hope you can, then I can get my hunting rights back which were taken away without asking me. I will be entitled to many other things which Public Law 671 (an Act of Congress) has taken from me. There is no place in Public Law 671 or the Federal Regulations where it says I am a member of the Ute Tribe after August 27, 1961.

Tell me the difference between the other people who are buying those stocks and myself. If you can deliver their stock certificates to them, then why is it that mine were not released to me? The money I used to buy these shares was my own...not yours...and they are mine to do with as I please. According to the State and Federal laws that apply to me and give you your jurisdiction in this case, you are merely the transfer agent and only that.

If you are still reluctant to deliver my stock certificates to me, please let me know by return mail so that I can consult an attorney and take proper steps to have them released to me.

Sincerely yours,


stockholder

cc: Area Director, Phoenix, Arizona
Secretary of Interior, Washington, D.C.
George C. Morris, Salt Lake City, Utah
W. M. Zellmer, Superintendent, Fort Duchesne, Utah

1560



JET CHEVROLET, INC.

Chevrolet - Buick Sales and Service
International Farm Machinery

ROOSEVELT, UTAH



Would you please transfer these
shares to George Houston - He has
need for them

Thanks:

W. E. Bastian

George C. Houston
or
Virginia C. Houston

SUBJECT - Assistant Manager
TO John B. Gale - Roosevelt Office
FROM Ralph D. Cowan - Salt Lake City, Utah
REFERENCE
DATE May 7, 1964

Dear Mr. Gale:

We have received, apparently from your Office, a stock power, executed by Glen McMurdock whose signature has been guaranteed by you for assignment to Berenice Vannoy of Certificate No. 601 for two shares of stock of Ute Distribution Corporation. Our records show that Mr. McMurdock acquired this stock from Barbara T. Hendricks Edmo.

If Mr. McMurdock is a member of the Tribe, then we must have a certification from the Superintendent of the Uintah and Ouray Agency that this stock has first been offered to other members of the Tribe. However, if Mr. McMurdock is not a member of the Tribe, then we can proceed with the transfer as requested.

We would appreciate it if you would let us know whether Mr. McMurdock is a member of the Tribe, either Mixed-Blood or Full-Blood.

Yours very truly,

Ralph D. Cowan
Vice President

RDC:bmp

1569

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Uintah and Ouray Agency

NOTIFICATION

No acceptance of your Offer to Sell _____ shares of stock in the Ute Distribution Corporation has been made by the Ute Indian Tribe or a member. You may now sell this property to any person, but for an amount not less than \$ _____ which you asked, and upon the same terms and conditions as offered to members. Such sale must be completed no later than _____ or the shares re-offered in the same manner as this time.

Your attention is called to regulations requiring a certification by this office that must be presented to the Transfer Agent, The First Security Bank of Utah, before the assignment of shares of stock can be made to another party. Such certificate can only be made upon your furnishing this office certified proof that you have received no less than the price you asked for the shares offered. The Transfer Agent will also need a stock power assigning the shares to the purchaser, which you must present to this office with your affidavit.

There will be a transfer fee of \$1.00 for each new certificate issued by the Transfer Agent and Federal Stock Transfer Tax at the rate of \$.08 for each share sold. Since you will be selling only the shares you offered, or up to that number, a new certificate will need to be issued you for the remaining shares you own, if any. This certificate will also cost you a fee of \$1.00. A certified check or money order for these costs, made payable to The First Security Bank of Utah, must also be deposited at this office.

Superintendent

1584

"E"

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Uintah and Ouray Agency
Fort Duchesne, Utah

NOTIFICATION

No acceptance of your Offer to Sell has been made by a member of the Tribe. You may now sell the following described property to any person but for an amount not less than \$, and upon the same terms and conditions offered to the members of the Tribe. Such sale must be completed no later than

Your attention is invited to regulations requiring a certification by the Superintendent in the sale of corporate stock and the use of a Superintendent's certificate, suitable for recording, in the conveyance of real property.

Superintendent

1585

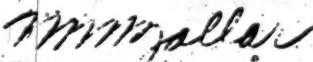
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Uintah and Ouray Agency
Fort Duchesne, Utah

Case A-2

NOTIFICATION

An acceptance of your Offer to Sell stock certificates in the two range companies has been received from the Ute Indian Tribe. It is requested that you contact this office regarding the completion of necessary documents required to convey them.

Be sure to bring in your Antelope Sheep Range Company stock certificate if it has been delivered to you. If you wish to mail in the certificate, please sign it on the reverse in the space provided, as your name appears on the face of it, have your signature witnessed and send by certified mail, return receipt requested.



M. M. Zollar, Superintendent

1586

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Uintah and Ouray Agency
Fort Duchesne, Utah

Case Number _____
Opened on _____ 1960

Dear Sir:

Two or more acceptances of Offer to Sell have been received for the certificate(s) listed.

If you are still interested in the purchase, it is requested that you submit a sealed bid on this form, as required by 25 CFR 243.7. Sealed bids will be received at the Uintah and Ouray Agency, Fort Duchesne, Utah until 2:00 p.m. on the date shown above, and at that time publicly opened. The sale shall be made to the highest bidder provided the highest bid equals or exceeds the seller's offering price.

Your bid, with the balance of consideration, must be securely sealed in a suitable envelope, addressed to the Superintendent, Uintah and Ouray Agency, Fort Duchesne, Utah and marked on the outside with the case number and date of opening indicated on the upper right corner of this letter.

Sincerely yours,

Superintendent

Seller _____

I bid _____

Offering Price _____

Signature of Bidder

Certificate(s) in _____

Address

1587

OFFER TO SELL

The seller hereby offers to sell certain property described as:

for an amount not less than \$
conditions:

and upon the following terms and

Not less than 10% of the total consideration, made payable to the seller, shall be submitted with the Acceptance of Offer To Sell: within 30 calendar days from date of Acceptance of Offer To Sell, the balance of consideration, made payable to seller, shall be submitted to the Superintendent, Uintah and Ouray Agency, Fort Duchesne, Utah; failure to pay the balance of the consideration within the specified time will constitute a forfeit of the 10% deposit to the seller.

All deposits are to be made by certified check, bank draft or postal money order made payable to the seller.

In the event two or more acceptances of the seller's offer are submitted, the Superintendent shall call for sealed bids from the parties submitting such acceptances and the sale shall be made to the highest bidder, provided the highest bid equals or exceeds the seller's offering price.

Date:

Seller

Address

NOTIFICATION

Case Number

The above-described property is hereby offered to all members of the Ute Indian Tribe of the Uintah and Ouray Reservation, in accordance with the foregoing terms. Acceptance of Offer to Sell must be on the following forms and must be received by the Superintendent, Uintah and Ouray Agency, Fort Duchesne, Utah, not later than 2:00 P.M. MST

Date:

Superintendent

ACCEPTANCE OF OFFER TO SELL

The purchaser accepts Offer To Sell the above-described property on the terms and conditions set forth in the Offer To Sell and to pay the seller the sum of \$

Date:

Purchaser

Note: Failure to submit a deposit of not less than 10% of the amount offered shall be cause for rejection of the offer.

Address

1588

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Uintah and Ouray Agency
Fort Duchesne, Utah

Antelope Sheep Corporation
Roosevelt, Utah

Rock Creek Cattle Corporation
Fort Duchesne, Utah

Ute Distribution Corporation
Fort Duchesne, Utah

Tribal Business Committee
Ute Indian Tribe
Fort Duchesne, Utah

Gentlemen:

In accordance with 25 CFR 243.6, you are hereby notified of an offer
to sell as indicated on the attached "Offer to Sell."

Sincerely yours,

Superintendent

1589

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Uiptah and Ouray Agency
Fort Duchesne, Utah

Dear

Regulations governing disposition of interests owned by the Affiliated Ute Citizens in tribal assets, which include the shares of stock in the corporations, became effective on September 11. Any transaction completed or negotiated prior to this date, without regard to these regulations or on the prescribed forms is invalid.

If you wish to sell your stock as indicated in a recent letter, it will be necessary that compliance be made with the enclosed instructions which are self-explanatory. Forms of Offer to Sell to be prepared in duplicate for your interest in each corporation, are enclosed.

These forms must be signed by the owner of the stock certificates who is proposing to sell them.

Sincerely yours,

M. M. Zollar
Superintendent

Enclosures

1590

Instructions

OFFER TO SELL

A mixed-blood member desiring to dispose of a stock certificate shall complete two of the forms, "Offer to Sell." He must describe the stock certificate; i.e., specify the corporation; indicate minimum price; date; sign both copies; and deliver or mail both completed copies to the Superintendent, Uintah and Ouray Agency, Fort Duchesne, Utah.

The Superintendent, upon receipt of "Offer to Sell," shall complete the "Notification" by inserting dates, assigning a case number, signing the original and duplicate-original and retain both in his office. The date indicated in the "Notification" for acceptance of "Offer to Sell" must be more than 10 days after notices are posted, in accordance with 25 CFR 243.6.

Twenty-five conformed copies of the "Offer to Sell" and "Notification" should be prepared for use in connection with the following procedure:

- (1) Superintendent shall notify the following in writing using form letter "A," with an attached conformed copy of "Offer to Sell":

Antelope Sheep Corporation
Rock Creek Cattle Corporation
Ute Distribution Corporation
* Tribal Business Committee

* Three conformed copies of "Offer to Sell" should be sent to the Tribal Business Committee.

- (2) Superintendent shall post notices, using conformed copies of "Offer to Sell," for at least 10 days (25 CFR 243.6) in a conspicuous place at the following:

Uintah and Ouray Agency Office
Roosevelt Post Office
Whiterocks Post Office
Randlett Post Office
Myton Post Office
Fort Duchesne Post Office
Such other places as the Superintendent may deem desirable

- (3) After posting, six conformed copies of the "Offer to Sell" should be certified on the reverse as follows:

"I, the undersigned, hereby certify that I personally posted a notice of which the within is a true copy at

, on , 1960.

Signature

Title

1591

Purchaser(s) shall use the form, "Offer to Sell," to complete the "Acceptance of Offer to Sell." Purchaser shall insert the amount; date, sign, indicate his address, and return the acceptance to the Superintendent, together with a deposit of at least 10% of the consideration. . . Cashier's check, money order, etc., shall be made payable to the seller. The Superintendent should hold all deposits until the transaction is completed.

Superintendent upon receipt of the acceptance of the offering from any member of the tribe to purchase certain property shall:

- (1) If only one acceptance of the offering is received, immediately notify the mixed-blood member making the offer to sell, using form "C" and the sale may be completed in accordance with the offer and acceptance;
- (2) If two or more members submit an acceptance of the offering, the Superintendent shall call for sealed bids from the parties submitting such acceptances, using form letter "B" to notify the interested parties. Case numbers must be assigned to each separate transaction in order to identify the bidder's sealed bid. At least 10 days time is suggested for submission of sealed bids. Notice should be sent to mixed-blood member making the offer to sell, using form "B".

If no acceptance to purchase is made by a member, the Superintendent shall notify the mixed-blood member making such offer to sell that no member of the tribe has accepted the "Offer to Sell," using form "E," and the mixed-blood member may then sell at any time within six months thereafter to any person at the same or greater price, and upon the same terms and conditions offered to the members of the tribe. Such purchaser must be furnished a certificate properly acknowledged for recording and certifying that a proper offer at a price and on terms specified in this certificate was made to members of the tribe in accordance with the law and regulations of the Secretary.

CERTIFICATE

14
I hereby certify that on _____,
shares of stock in the Ute Distribution Corporation owned by _____
_____, MS _____, were offered for sale
to members of the Ute Indian Tribe for an amount of \$ _____
in accordance with law and regulations of the Secretary, as contained in the
act of August 27, 1954 (68 Stat. 868) and 25 CFR, Part 243, and as further
set forth in the Articles of Incorporation and on stock certificate No.
_____; further that there were no acceptances of said offer.

X
Date: _____

M. M. Zollar, Superintendent
Uintah and Ouray Agency
Bureau of Indian Affairs

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. M. L. Schwarz, Superintendent DATE April 23, 1965

FROM : Realty Officer

SUBJECT: Case of Mixed-Blood Members vs Dillman et al in USDC

It appears the Regional Solicitor believes we have a file on this case, but as far as I know, his memorandum of April 15 is the first written reference we have had to it. We have, however, been aware of it since mid-February and have discussed it to some extent. We should try to secure a copy of the complaint.

A summary of the part the Bureau played in the sale of the stock by members of the Ute Distribution Corporation is contained in our letter of October 23, 1964, in reply to the Washington Office letter of October 8, copies attached for your reference, and to present to the Solicitor if you wish.

There are also attached copies of the forms we used in offering and notifying, and in certifying that the sale of the stock was done in accordance with the act of August 27, 1954 (68 Stat. 868) and 25 CFR 243. *25-15-7877*

Also enclosed are copies of executed forms as an example of one case we handled. In our involvement with offering 970 shares for 129 members and the furnishing of certificates to the First Security Bank of Utah for the 808 shares sold to non-members prior to August 27, 1964, we could not help but note several irregularities and indications that advantage was being taken of some of the sellers. Since, however, the seller furnished us with an affidavit or certified statement to the effect he had received from the named non-Indian buyer the price he had asked, we did not feel it our responsibility to pursue the matter further.

Whether there is responsibility on the part of the Bureau, now, to present evidence that it has which might be of assistance to the plaintiffs in the case is a matter to be decided. From the standpoint that we are perhaps quite aware of numerous instances in past years where the Indian people and their interest have been exploited by non-Indians, even though in this case the mixed-blood plaintiffs were actually terminated of Bureau supervision and jurisdiction on August 27, 1961, perhaps there is an obligation to become involved.

Adelyn A. Logan
Adelyn A. Logan

Enclosures



1596

Real Prop. Mgmt.
Acq. & Disp.
310 - U&O - Ute
Dist. Corp.

NOV 3 1964
ack.

Commissioner of Indian Affairs

Washington, D.C.

Attention: Tribal Operations

Sir:

Reference is made to the Tribal Operations Officer's letter of October 8 requesting certain information pertaining to the Ute Distribution Corporation.

Enclosed is a copy of a letter dated October 23 from the Superintendent, Uintah and Ouray Agency, which indicates that stock in the above-named corporation was sold in accordance with the requirements of the Act of August 27, 1954 (68 Stat. 868), as amended, and the Articles of Incorporation of said corporation. Also included is information as to the number of shares of stock sold to nonmembers prior to August 27, 1964. The last four paragraphs of the Superintendent's letter are in answer to our request for his estimate as to the value of the shares sold.

Sincerely yours,

Assistant Sgd. George T. Redd

Area Director

Enclosure

cc:
Supt., U&O Agency ✓

1597

October 23, 1964

Mr. W. Wade Head

Area Director, Phoenix, Arizona

Dear Mr. Head:

This is in reply to letter of October 13, to which was attached a copy of letter from the Bureau's Chief Tribal Operations Officer concerning stock of the Ute Distribution Corporation.

Each of the 490 members of the Ute Distribution Corporation was issued 10 shares of stock. Upon offer of 129 members, we posted a total of 970 shares for them in four separate postings, the first on October 3, 1963 and the last July 9, 1964, to give opportunity to other members to purchase them in accordance with the act of August 27, 1934 (68 Stat. 868) and 25 CFR 243. Of this number, 808 shares were sold to non-members and five shares to a member, prior to August 27, 1964. The balance, insofar as our records are concerned, was not sold.

The First Security Bank of Utah, Salt Lake City branch, as Transfer Agent, held the original stock certificates of all members at that office. Rather than actually affix the certificate of this office to the stock certificate as required, an expedient arrangement was made with them to furnish a separate certification, which was transmitted with the stock power form and required transfer fees, for issuance of a new stock certificate. A sample of the form of certification is attached, and was used in all cases.

As to the value of the shares sold, this is virtually impossible to ascertain, since there are so many contingencies. It would be based on two main sources of income to the Ute Distribution Corporation, i.e., revenue from oil, gas and mineral leasing, and unadjudicated or unliquidated claims in the U.S. Claims Commission.

Since August 27, 1961 when the final proclamation was posted in the Federal Register terminating Bureau trusteeship over the 490 members, the Ute Distribution Corporation has received its 27.16186% share of all oil and gas revenue, approximating \$2,245,300 from tribal lands, or about \$610,000 from this source. If all had been distributed to the members, it would have amounted to about \$1,245 each for the three years.

1599

Value based on future income is also conjectural. Because of the Ute Tribe's rejection of bids at three recent oil and gas sales, against the recommendations of the Oil and Gas Supervisor and this office, immediate (upon approval of leases) revenues in the amount of \$442,760, in addition to other unknown possible benefits, did not materialize. Accepted bids on the last two sales, however, will mean immediate income of \$441,643 upon completion and approval of the leases. There are approximately 185,000 acres of tribal lands that will be under lease by the end of the year, with annual rentals totalling over \$231,000.

We are not sure if there have been any moneys paid as a result of claims against the United States during the past three years which the Ute Distribution Corporation shared in. But there is one unliquidated claim in amount of approximately \$8,000,000, of which the Utes of this reservation will receive 60%, and 27% of this will be paid the Ute Distribution Corporation. There are three remaining smaller claims which we do not believe have been finally adjudicated that may total about \$1,750,000, as full settlement.

Sincerely yours,

M. L. Schmerts
Superintendent

Enclosure

AH:logan

1600



IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

Phoenix Area Office

P. O. Box 7007

Phoenix, Arizona 85011

Real Prop. Mgmt.
Acq. & Disp.
310 - U & O

OCT 15 1964

Mr. M. L. Schwartz:

Supt., Uintah & Ouray Agency

Dear Mr. Schwartz:

Enclosed is a copy of a letter from the Chief, Tribal Operations, requesting certain information in connection with the stock of the Ute Distribution Corporation.

It would be appreciated if the requested information could be forwarded to this office at a very early date. It may be that some of this information is not available, but we would appreciate receiving such information as you may have.

For our own information, we would like to have your observations as to the value of the shares sold. This is not particularly important but would be an item of considerable interest to all concerned.

Sincerely yours,

Acting Asst. Area Director

Enclosure

1601



IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20240

Tribal Operations

Mr. W. Wade Head

Area Director, Phoenix, Arizona

Dear Mr. Head:

The mixedblood members of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah, in accordance with the Act of August 27, 1954 (P.L. 671-83rd Cong., 68 Stat. 686), as amended (25 USC 677 et. seq.), incorporated as the Ute Distribution Corporation.

Articles VI, VII and VIII pertain to the stock of the corporation. Article VIII provides that all stock issued until August 27, 1964, shall have stamped thereon certain wording as provided in the Article; that any stockholder who is a member of the mixedblood group who determines to dispose of his stock prior to August 27, 1964, shall first offer it to the mixedblood and fullblood members of the Tribe; that if the stock is not then purchased by a member of the Tribe it may be sold to nonmembers; and that the Superintendent shall certify on the stock certificate of stock sold to nonmembers that the offer was made in accordance with law and the regulations.

Now that August 27, 1964, has passed we are interested in having for our records the total number of shares sold to nonmembers prior to that date, a statement that an offer to sell to the members of the Tribe was made prior to each such sale of stock; and that stock certificates of stock sold to nonmembers had affixed upon them the required certification of the Superintendent.

Sincerely yours,

W. B. Quinn

Chief Tribal Operations Officer

1602

3218- Ute Distribution Corp

August 8, 1963

Mrs. Marle E. Conger
239 South 2nd East - Apt. # 2
Vernal, Utah

Dear Mrs. Conger:

After our discussion concerning your Ute Distribution Corporation stock, I found that there is a restriction on the certificate which prohibits transfer prior to August 27, 1964 unless a certification is received from Mr. Zeller setting forth the circumstances and conditions of an actual sale.

Consequently, it will be necessary to have Mr. Zeller provide this information in the form of a certification before any transfer could be completed.

Very truly yours,

M. E. Bridges
Assistant Trust Officer

MEB:HVL

N.B.: We will allow
a separate certificate
other than the 1 that
is called for on the
certificate itself.

1603

PORT DUCHESNE, UTAH

NOV 6 9 23 AM

Resources Division
November 5, 1963

MEMORANDUM

To: Superintendent M. M. Zoller

From: R. C. Curry, Director of Resources

UTAH AND OURAY TRIBAL BUSINESS
COMMITTEE

HARVEY HATCHER, CHAIRMAN
JAMES LUCH VICE-CHAIRMAN
JUANITA BRIDGES MEMBER
JOHN WOODCOCK, MEMBER
FRANCIS MCININLEY MEMBER
SIDNEY ATWINE, MEMBER

Reference is made to the advertisement of stock shares for some 43 owners in the Ute Distribution Corporation as offered on November 4, 1963. I understand that no acceptances were received to the offers made and that your office will soon issue a Certificate of Instructions to the owners as to how they can now sell their stock on the open market.

I called the attention of the Business Committee to the offers on two different occasions and the Business Committee was interested because of the possible management problem that might result in the future in the leasing of their mineral rights if the 490 owners are increased by the sale of stock. The Business Committee took no action on this matter but did express an interest in it and wondered what the results of these sales would mean.

I understand that the regulations pertaining to the sale of these stocks after they have once been offered to the tribe and members of the tribe is that they can be sold to any person desiring to purchase them but at not less than the price offered and this is the part that concerns me most. I understand that some of the people have agreed to take automobiles as part payment on the stock. It would seem that the acceptance of an automobile would not be fulfilling the requirements of receiving as much as the shares are offered for. For instance with the receipt of an automobile which costs the dealer \$2,000.00 and his markup of at least \$1,000.00 or \$1,100.00, the seller of the shares would receive approximately \$4,000.00 in value instead of \$5,000.00 if he had offered for \$5,000.00. I was wondering if the regulations could be construed to require the seller to receive only cash instead of equipment and chattels as they may pass hands in some instances. I wondered if this might be discussed with our attorney or your Field Solicitor to see if the receipt of chattels is a violation of the sale agreement as I am sure that some of the sellers may be taken advantage of by automobile salesmen who are anxious to obtain some of these shares of stock and at the same time effect the sale of an automobile.

R. C. CURRY

MINUTES OF DIRECTORS MEETING
UTE DISTRIBUTION CORPORATION
SEPTEMBER 10, 1963

PLTF. Ex. 58

President Lena D. Sixkiller called the meeting to order.

Directors present were:

Lena D. Sixkiller

Lorena D. Iorg

Preston Allen

Sarah Hackford

Lula H. Murdock

This meeting was called to order immediately after the adjournment of the meeting with the Uintah and Ouray Agency officials to take care of Corporation business.

Business considered as follows:

1. Received a letter from Glen Mc. Murdock, a stockholder in the Ute Distribution Corporation inquiring into the resolution adopted by the stockholders at their annual meeting July 20, 1963, that the Board do the things incidental to the Corporation and he asked that the new Director define the word "incidental". His letter to be answered inviting Mr. Murdock to attend the next Directors meeting to discuss this further. He would be notified of the time, place, and date of the meeting.
2. Rex C. McClure wrote to Supt. Zollar asking for a \$6,000 loan. The letter was referred to the Ute Distribution Corporation. He has a change of address to P. O. Box 391, Delores, Colorado.
3. Received Record of Stock Transfer signed by Jack D. Madson, Vice President, of ten shares of stock represented by Certificate No. 30, original stock issued to Elisabeth Curry Bungarner and sold and transferred to Dick E. Bastian of Roosevelt, Utah, represented by Certificate No. 491. This Stock Transfer Journal was received from the First Security Bank, First South and Main Street, Salt Lake City, Utah.
4. The Prospecting Permit for Oil and Gas to California Oil Company ready for the President and Secretary's signatures and Seal of Corporation affixed; also the Sand and Gravel Permit to Intermountain Concrete Company, Vernal, Utah, ready to be signed by the President and Secretary of the Corporation.
5. Letter received from the Bank of Vernal, W. J. Meagher, President, Re: Information on interests in the Ute Distribution Corporation assigned to this bank by Arlene Barson Gardner of Sandy, Utah, pledging her dividend payments as security on her \$700 loan. Also requested the restrictions on dividend payments for his files.
6. Letter to President Lena D. Sixkiller, Re: Arlene Gardner assignment and restriction on dividend payments, information, informing her that Mrs. Gardner had a loan from his bank and requested information on pledging interest in the Ute Distribution Corporation as security on loan dated August 3, 1963. President Lena Sixkiller answered the letter, gave a copy to Treasurer Lorena D. Iorg and Secretary Lula H. Murdock for files.
7. Letter dated August 20, 1963 from Mr. Morris, Re: Requesting the Board to hold a meeting to approve the Claims Attorney expense estimate. President informed him that this had been done on August 14, 1963.

Directors Meeting
September 10, 1963

-2-

8. Letter from Marie W. Conger on change of address to: c/o General Delivery, Reno, Nevada.
9. Letter to stockholders discussed. A letter to be sent to the stockholders informing them of sale of stock in the Ute Distribution Corporation and ask them if they were interested in buying. If they were interested, to let the Board of Directors know. If they wanted their names put on the mailing list, and if they had minor children who had stock in the Ute Distribution Corporation and they wanted them to buy, to contact the Trust Department, First Security Bank, Salt Lake City on the procedure of the sale. If they were interested in buying, the list of Offers to Sell would be mailed to them. Also, a letter to the Secretary of the Interior discussed to request him to send us his interpretation on the provision in the Offer to Sell form and stockholders selling for cash. The President stated that she and Lula H. Murdock would write the letter to stockholders and take it to the other Directors for review and approval. This would be done on the 12th of September.
10. The Bank sent a Resolution to the Board for signatures of the President, Treasurer, and Secretary for their record. They would honor two signatures out of the three on Corporation checks. Motion made by Lorena Iorg that the specimen signatures of three officers (President, Treasurer, and Secretary) be sent to the First Security Bank, two signatures out of three to be honored on all Corporation checks, motion seconded by Lula H. Murdock and carried by a vote of 5 for and 0 against.

There was only one copy of this Resolution 63-UDC-22 adopted by the Board September 10, 1963. This was mailed to the bank who will in turn send a copy back to the Corporation.

There being no further business, Preston Allen made the motion to adjourn, seconded by Lorena Iorg, and carried by a vote of 5 for and 0 against.

Meeting adjourned.

Respectfully submitted,

Lula H. Murdock
Secretary

Approved: November 21, 1963

Lorena D. Liphich
President

MINUTES OF DIRECTORS MEETING
 UTE DISTRIBUTION CORPORATION
 HELD AT FORT DUCHESNE, UTAH,
 ON THE 10th DAY OF SEPTEMBER,
 1963.

President Lena D. Sixkiller called the meeting to order.

Directors present were:

Lena D. Sixkiller

Lorena D. Long

Sarah Hackford

Lula H. Murdock

Preston Allen

Others present were:

Bert Nareho, Acting Supt. U&O Agency.

Mrs. A. H. Logan, Realty Officer,

U'O Agency, Fort Duchesne, Utah.

This was a special meeting held with the Government Officials to discuss the sale of stock in the Ute Distribution Corporation, the transfer of stock, advertising of the Offers to sell and other corporation business.

The following business was considered:

1. The 10 day advertising period of the Offers to Sell stock to the Tribe by the individual stockholders and the possible change of days from 10 to 30 days. Mr. Nareho stated that it could be made at this office under Section 243.3, it would be according to the provisions as set up in the Secretary of the Interior's Regulations. Mr. George C. Morris, Attorney for the corporation called Mr. Nareho informing him that he would not be able to attend the meeting, due to difficulty of landing his plane due to weather conditions at the Roosevelt Air Port. Mr. Morris called from Vernal, Utah.
2. Individual stockholders should be notified of all sales of stock, many living off the reservation, to give them an opportunity to buy if they so desired, this should be done by the Uintah and Ouray Agency office. Mrs. Logan stated that their obligation and responsibility was to notify the corporation only, that maybe the Board of Directors should do this, the government did not have the funds available to set up a Clerks job to do this work as it would take a full time job to handle this work.
3. President Lena D. Sixkiller informed Mr. Nareho and Mrs. Logan that the Board had met with the First Security Bank of Utah, in Salt Lake City, Utah, to discuss the possibility of getting an open end group loan to buy up the stock being offered for sale, to keep the control in Indian ownership.
4. Mrs. Logan informed the Board that a major oil company had contacted her and asked for information on how to buy stock being offered for sale, she informed him that the advertisement on offers to sell was to the members of the tribe only.

5. Posting of Offers to Sell are to be put in conspicuous places. They will be posted in the Post Offices in the following towns: Myton, Randlett, Fort Duchesne, Whiterocks, and Duchesne.
6. The Covenant set up in Public Law 671, on any mixed blood member of the Tribe disposing of his interests in tribal assets he has received through the division of such assets between the mixed blood and full blood members of the Tribe, he must first advertise his Offer to Sell to the Tribe. If a member sells, he must abide by the covenant, if a non-member buys the stock offered for sale and wants to sell later, the covenant does not apply.
7. Discussion held on the Offer to Sell forms. The selling price as listed on the form advertising the sale of stock to the members of the tribe is for Cash. Second-hand cars, old models not accepted or any other consideration except cash when selling to non-members, the sale must be for the same price or more but not less and on the same terms and conditions as it was offered to the Tribe.
8. The selling stockholder must furnish the Supt. of the Uintah and Ouray Agency with a signed affidavit certifying he has received cash for the full amount as advertised or his selling price.
9. Elizabeth Bumgarner, a stockholder in this corporation sold her ten shares of stock to a non-member, Mr. Dick E. Bastian of Roosevelt, Utah. Her Certificate Number #0 was surrendered for cancellation and a new certificate No. 491 was issued to Mr. Bastian. Her Offer to Sell was advertised to the Tribe locally, many of our stockholders live off the reservation and know nothing about the sales. Elizabeth furnished a signed affidavit to the Supt. stating she received \$5000. cash when she accepted a car as part payment. Motorized by Earl Dillman.
10. Mrs. Logan informed the Directors that she had 29 correct Offer to Sell applications signed and ready to be advertised, she also had some that were Thermo-Fax copies which were not readable, which will have to be submitted again on the gov. forms, and she estimated that she would have 40 offers to advertise by the first of October. It would take \$90,000. to purchase all of the offers. Mr. Narcho stated that our attorney could contact the Area Office on the provisions of selling price listed in the Offer to Sell, etc.
11. Loans and assignments of division of interests on shares of stock being sold, Court Orders, Executions and Garnishments, etc. discussed. The Directors main interest in this was to have Supt. Zeller hold these up until they could be cleared. L. Fred Luttrell is selling a share without getting a release from the UDC, he has two loans bal. due including interest, \$10,000. Both of these loans is in a delinquent status, the only way we can expect payment on these loans is from his stock in the UDC and he is selling half of the shares, the income he will receive will not pay one loan off.
12. It was decided that the Board of Directors would write letters to the adult stockholders notifying them of sales of shares and ask them if they were interested in buying stock and their children buying stock, if they wanted their minor children to buy stock, they were to contact the FSB Trust Department.

There being no further business, Preston Allen made the motion to adjourn, seconded by Lorenz. Meeting adjourned.

APPROVED: November 21, 1963

Lorenz
President

Respectfully submitted,
W. L. Burdock
Secretary

MINUTES OF DIRECTORS MEETING
UTE DISTRIBUTION CORPORATION
HELD AT SALT LAKE CITY, UTAH
SEPTEMBER 18, 1963

PLTF. EX. 53

President Lena D. Sixkiller called the meeting to order.

Directors present were:

Lena D. Sixkiller
Lorena D. Iorg

Sarah Hackford
Lula H. Mardock

Others present were:

Mr. Ralph D. Cowan - Vice President Trust Department
First Security Bank

Mr. C. Tab George - Trust Officer, First Security Bank

This was a special meeting with the First Security Bank of Utah, National Association, Main at First South, Salt Lake City, Utah, Trust Department, as Transfer Agent for the Ute Distribution Corporation to discuss the procedure to be followed in transferring stock and the issuance of new certificates and other Corporation business.

The following business was discussed and considered:

1. Set up the procedure on the transfer of stock in the Ute Distribution Corporation. The Board of Directors suggested that the procedure to be set up by steps beginning with the filling out of the Offer to Sell form by the seller, to the last step of the delivery of the new certificates to the buyer or to the bank and to have the procedure typed and a copy furnished to the Ute Distribution Corporation. This was agreed to by Mr. Cowan.
2. Report by the Secretary on the meeting of the Board of Directors with Mr. Bert Marcho, Acting Superintendent, and Mrs. Logan, Realty Officer, with reference to the 10 day period of advertising the Offer to Sell. Mr. Marcho stated they had the authority to do this since the Regulations provided they must be advertised to the Tribe for at least 10 days and to keep in accordance with all advertisements of the government, a 30 day period would be in accordance therewith.
3. Articles of Incorporation and By-Laws: President Lena Sixkiller asked Mr. Cowan for his opinion on Section 11, Section 4--Transfer of stock of the Corporation. This section stated that the certificate must be surrendered to the Holder of record for transfer. Did this mean the Board of Directors or the Bank as transfer Agent. Mr. Cowan explained that it meant the bank as transfer agent for the Ute Distribution Corporation.
4. Offers to Sell: President Lena Sixkiller asked Mr. Cowan for his opinion on the Offer to Sell forms where the seller fills out the consideration for cash. When the seller sells to non-members, does this mean for cash, too. Some of the stockholders who want to sell have been accepting cars in advance. Mr. Cowan stated that when the seller sells to non-members, it must be on the same conditions as the offer made to the members.

Mr. Cowan stated that the certificates to be surrendered for cancellation must be surrendered to the Bank by the Secretary of the Interior which would be the Superintendent as his authorized representative. When he receives a certified statement from the Superintendent that the Covenant has been met and a letter requesting the transfer of stock with a signed stock power, he will issue a new certificate.

The following steps of the procedure on the transfer of stock in the Ute Distribution Corporation discussed which Mr. Cowan will have typed and copies furnished to Superintendent Zollar and the Ute Distribution Corporation:

1. Offer to Sell forms to be filled out and signed by the seller.
2. List of Offers to Sell and the sellers asking price to be posted.
3. Ute Distribution Corporation to notify members interested in buying stock.
4. If Offer to Sell is accepted by a member, 10 per cent of the purchase price to be submitted with his acceptance and filed with the Superintendent of the Uintah and Ouray Agency, Fort Duchesne, Utah.
5. Seller to sign stock power and surrender it to Superintendent. Signature of seller to be certified.
6. Superintendent to notify bank when stock is purchased with signed stock power and letter of transmittal requesting transfer of stock.
7. When stock is sold to members and when the Bank receives signed stock power with a letter from the Superintendent requesting the bank to transfer stock; the Bank (Transfer Agent) will issue the new certificate.
8. If stock is sold to a non-member, the Bank needs certification from Superintendent that the Covenant has been met, signed stock power from seller and a letter from the Superintendent requesting the transfer of stock and the Transfer Agent will issue a new certificate.
9. Estates: It is the heirs responsibility to request the transfer of stock. The Bank needs the following before the transfer:

If the estate has been probated by the Federal Government, the following is required: (1) Order Determining Heirs. (2) Signed stock power signed by the Administrator. (3) Letter requesting transfer of stock.

If estate is probated by the State Court, the following is required: (1) Court Order of Distribution. (2) Signed stock power by the Administrator. (3) Letter requesting the transfer of stock.

10. Fractional Shares: Mr. Cowan stated that they will not issue new certificates on fractional shares of stock, that efforts should be made to get one heir to buy up the fractional shares. The Bank will try to hold up issuing certificates on these until August 27, 1963.

Mr. Cowan stated that the Bank would rather have the Corporation request the transfer of stock on the estates and handle the transfers for the heirs.

Parents selling inherited interests of minor children: The Bank will require:

1. Certified copy of Court Order of Distribution or Order determining heirs.
2. Signed stock power.
3. Certification of State guardianship.

The Board asked Mr. Cowan what was the status on the Corporation sending checks to parents of minor heirs. Mr. Cowan informed the Board that according to a new law, the parents could handle minors funds up to \$1,000 without State Guardianship, but if the parents wanted to sell the minor's stock, they would have to have State Guardianship.

Mr. Cowan stated that as Transfer Agent, he was acting for the Ute Distribution Corporation. When the Certificates are surrendered to the Bank for cancellation, that in lieu of signing the original certificate, a stock power would be signed and attached to the certificate, the signature on the stock power to be certified.

Loan Clients and Assignees selling their stock and what must be done by the Ute Distribution Corporation: Discussed. Public Law 671 requires that the stock be pledged as security on loans until paid-in-full. Before August 27, 1964, their certificates are to be surrendered to the Ute Distribution Corporation as security on loans until paid in full. Loan clients must get a release on their stock before they can sell.

Stockholders who have given assignments of their dividend payments to the First Security Bank or to other lending agencies must obtain a release from the lender or make arrangements to pay off their loans before offering their stock for sale. The Ute Distribution Corporation is to notify the Superintendent to hold up any offers to sell by loan clients or assignees until arrangements can be made to pay off the indebtedness.

The Board reported to Mr. Cowan that they had mailed out letters to all adult stockholders requesting them to notify the Board of Directors if they were interested in buying stock in the Corporation and wanted their names put on the mailing list to be notified of Offers to Sell; also, if they were interested in their minor children buying stock. If so, they were to contact the Trust Department, First Security Bank. Mr. Cowan was pleased with this information to the parents.

Directors Meeting
September 18, 1963

Mr. Cowan stated that the Bank will give consideration to the minors buying stock.

The bank requested the following:

Letters or reports from the Claims Attorneys on the status of judgments from Claims against the United States or something in their files to show the value of the stock. Mr. Morris was to furnish the Bank with this information.

It was understood that Mr. Cowan had full responsibility of transferring stock in the Ute Distribution Corporation. The Ute Distribution Corporation will follow the procedure. New certificates will be sent to Paul Murphy, Manager, Roosevelt Branch of the First Security Bank requesting signatures of the President and Secretary. Mr. Murphy to deliver new certificate to purchaser.

Mr. Cowan informed the Board of Directors that the bank charges a transfer fee plus a tax on the shares transferred and for a new certificate. The expenses to be paid by the individual stockholders involved. It is not fair to the other stockholders to pay the expenses involved in issuing the new certificates. A small fee should be charged for the officers signing the certificates, for using personal cars to and from Roosevelt, Utah.

No further business to discuss. The meeting adjourned.

Respectfully submitted,

Paul H. Murphy
Secretary

Approved: October 15, 1963

Leslie D. Lippold
President

MINUTES OF DIRECTORS MEETING
UTE DISTRIBUTION CORPORATION
HELD AT SALT LAKE CITY, UTAH
SEPTEMBER 19, 1963

President Lena D. Sixkiller called the meeting to order.

Directors present were:

Lena D. Sixkiller
Lorena D. Iorg

Sarah Hackford
Lula H. Murdock

This was a Special Meeting called to meet with Mr. George C. Morris, Attorney for the Corporation, to discuss Corporation business pending and important to be resolved:

Following business taken care of:

1. Reports on meetings:

1. Meeting with Mr. Marcho, Acting Superintendent in absence of Superintendent Zollar who was ill and in the hospital, and Mrs. A. H. Logan, Realty Officer, Uintah and Ouray Agency, Fort Duchesne, Utah. RE: Advertising of Offers to Sell.
2. Transfer Agent and First Security Bank representatives, Mr. Ralph D. Cowan, Vice President, and Mr. C. Tab George, Trust Officer, Re: Procedure on transfer of stock in the Ute Distribution Corporation, and other business.

2. Setting value on stock certificates: Mr. Cowan wants copies of any reports or letters from our claims attorneys with reference to claims against the United States pertaining to judgments, the amount and how soon expected in order to have something in their files on the value. The value of \$5,000 may be too much, a value of approximately \$3500 may be nearer to the real value. A value will have to put on the stock if a loan is negotiated.

3. Loan clients offering their stock for sale. Mr. Morris suggested that the Board submit a list of names of loan clients to the Superintendent to hold up Offer to Sell and also the names of stockholders who gave assignments on their dividend payments to secure loans.

4. CF Loans: It was reported to Mr. Morris that Loren Fred LaRose had filled out the Offer to Sell and had not obtained a release from the Ute Distribution Corporation. His stock is pledged to secure his loan. He is offering to sell five shares for \$2500 which will not be sufficient to pay his two loans off in full. It was also reported that two loan clients, Earl Gardner and Loren Fred LaRose had not answered the letters with reference to the delinquent status of their loans. Mr. Morris is to write to them again informing them to answer the letter and make arrangements to bring their loans current.

Lorena Iorg stated that she had suggested Mr. LaRose contact the Board and make arrangements to put up home and land for sale, and pay his loans in full. The Alvin Denver, Sr. loans clearing up fine. Board to notify Superintendent to reject Fred's Offer to Sell.

Earl Gardner loan should have been paid in full as of October, 1962. He has not made any arrangements to pay the loan off or any part of the loan and has not answered the letters mailed to him.

On stockholders in need of assistance in managing their affairs, they will have to contact the First Security Bank and make arrangements. Board to notify Superintendent to hold these Offers to Sell.

Mr. Morris was informed that the Board requested the Transfer Agent to send new certificates to be signed in a package deal so all could be signed at one time.

President Lena Sixkiller informed Mr. Morris that a business man in Roosevelt, Bob Sathers had informed her he had a Court Order of assignment on Floyd Candell's dividend payments. She also asked Mr. Morris if she had to accept any notices served on her as President of the Ute Distribution Corporation. Mr. Morris advised her to accept them, send them to him for his inspection, and he would let the Ute Distribution Corporation know what to do.

State Guardianship discussed: Mr. Morris was informed that the Bank had told the Board of Directors that they could send minors funds up to \$1000 to the parents without them having State Guardianship, but if the parents wanted to sell the minors stock, they would have to get State Guardianship. Mr. Morris stated that it was best for all concerned to have the parents get State Guardianship, especially on estates and to hold all dividend payments until the parents got the guardianship in event the Corporation makes a large dividend payment, they will have to get guardianship anyway. Better to do it now. Mr. Morris was informed that the Bank suggested that the Board handle all requests for transfer of stock of the heirs in cases of Estates.

State Guardianship—Connie Mack Denver. Mr. George Stuart, Mr. Denver's Attorney, would furnish the copies of the guardianship to Lena D. Sixkiller, but she had not received them as yet. Also, that this matter was discussed with the bank.

The dividend checks (\$275.00) of the Reed Hendricks children, heirs of his estate, were returned to the Ute Distribution Corporation. Still holding them waiting for the new address. Will write to parents home (children's Grandmother) to try to find out where to send the checks.

A fee for service for signing each certificate discussed. This fee would cover the expenses for the use of personal cars to and from the First Security Bank of Roosevelt, to sign the new certificates, and payment for services. It is not fair for the Corporation to pay these expenses because all of the stockholders are not involved. The individuals are to assume these expenses, not the Corporation. Lorena Iorg made the motion that a \$2.00 fee be charged against each stockholder's certificate being offered for sale regardless of the number of shares contained in that certificate. Motion seconded by Sarah Backford and carried by a vote of 4 against and 0 against. (Resolution No. 23). Mr. Morris suggested the Resolution be furnished the Superintendent and make arrangements with him to collect. The Ute Distribution to have a separate account on these funds.

The following Resolution was adopted by the Board of Directors:

Directors Meeting
September 19, 1963

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RESOLUTION

RESOLUTION NO. 63-UDC-23
September 19, 1963

BE IT RESOLVED BY THE BOARD OF DIRECTORS FOR THE UTE DISTRIBUTION CORPORATION, A UTAH CORPORATION, THAT, we do hereby set a two dollar (\$2.00) fee for services rendered in completing new certificates regardless of the number of shares contained in each certificate, and said fee is to be paid by the Seller or Purchaser.

Lena D. Siskiller
Lena D. Siskiller, President

Sarah V. Hackford
Sarah V. Hackford, Vice President

Lorena D. Iorg
Lorena D. Iorg, Director

Not Present
Preston V. Allen, Director

Lula H. Murdock
Lula H. Murdock, Secretary

CERTIFICATION

I hereby certify that the foregoing resolution was adopted by the Board of Directors for the Ute Distribution Corporation under authority of the Articles of Incorporation and By-Laws at a meeting duly called by the President and held on the 19th day of September at Salt Lake City, Utah, at which meeting a quorum was present and by a vote of FOUR for and NONE against.

Lula H. Murdock
Lula H. Murdock, Secretary

MINUTES OF DIRECTORS MEETING
UTE DISTRIBUTION CORPORATION
HELD AT SALT LAKE CITY, UTAH
NOVEMBER 14, 1963

PLTF. EX. 58

President Lena D. Sixkiller called the meeting to order.

Directors present were:

Lena D. Sixkiller
Lyla Mardock

Sarah Hackford
Preston Allen

Others present:

Mr. George C. Morris

This meeting was a continuation of the November 13, 1963 meeting with Mr. Morris which was recessed until after the meeting with the bank.

The following business was discussed and considered for approval:

Mr. Morris reported that he had some information in the Group Life Insurance. He was to check into it for more information. He was informed that we were more interested in a medical insurance. He stated that the two may be worked out together. He would check into this further.

Mr. Morris also reported on the Piute Suit and the Hearing of November 8, 1963. He stated that Judge Ritter was presiding and that he had ruled against the motion to dismiss the case and stated that there will be a trial in court. He wanted to hear testimonies from witnesses. Mr. Boyden did very well in explaining the case to the Judge, but the Judge had given him a rough time. He and Mr. Boyden are to prepare answer to summons, but he needed additional information on the break-down on Dockets 44 and 45. See R. O. Curry and get this report from him.

Mr. Morris read parts of the Secretary of the Interior's answer to the summons. Some of the information as follows:

Dockets 44 and 45 divided as follows:

Attorney Fees	\$ 731,500.00
Affiliated Ute Citizens	1,892,774.22
Ute Indian Tribe, Fullblood	5,075,725.78
Total	\$7,700,000.00

Per Capita Payments made as follows: (includes interest earned)
Affiliated Ute Citizens.

December, 1960	\$3900 for 490 members	\$1,911,000.00
May, 1961	400 for 490 members	196,000.00
September, 1961	84 for 490 members	41,160.00
Total		\$2,148,160.00

Total Per Capita payments made to the full-bloods \$2,500,000.00. Did not get the individual per capita payments. Mr. Morris will furnish us with a copy. In the Secretary of the Interior's answer, he stated that the Ute Distribution Corporation has a balance of \$121,371.83 in the United States Treasury as of September 30, 1963.

The Ute Indian Tribe (Fullblood) balance in the United States Treasury as of September 30, 1963 is \$3,578,206.56. Income for 1962 and 1963:

Ute Indian Tribe, 1962	\$ 990,544.00
Ute Indian Tribe, 1963	400,157.83
Total	\$1,390,701.83

Ute Distribution Corporation, 1962	\$ 14,281.40
Ute Distribution Corporation, 1963	77,443.35
Total	\$ 91,724.75

Sources--Income from oil and gas leases, mineral rights, land, excluding judgment awards, and other sources. Per capita payments made prior to the division of assets (Tribal) between the Fullbloods and Mixedbloods \$7,180,630.00

Life Insurance and Medical Insurance discussed next. Mr. Grant E. Mann, 338 East, 1st South, Salt Lake City, Utah, and Mr. Richard L. Parker, same address, Brokers who had set up the Group Insurance for the Ute Indian Tribe, were present to explain the policies.

Mr. Morris explained the Mixedblood situation. 128 minor stockholders under Trust of the First Security Bank, Salt Lake City, Utah. Informed them that there were 490 stockholders in the Ute Distribution Corporation and each had a certificate representing ten shares of stock.

They explained how their insurance works. When told that we were interested in a medical insurance for our stockholders, they stated that this could be worked out, perhaps in a package deal. They would check into this further. They will need the names and address of all stockholders, adults and minors. Minor children of stockholders who are not enrolled or who are not stockholders could be included in this providing the parents paid the premiums for them. Husbands or wives of stockholders who are not stockholders could also be included in this. Payment for the insurance could or may be worked out by getting the stockholders to authorize using the Corporation funds, if not, the individuals themselves could pay from their own funds. Insurance for family groups could be worked out.

On the Medical Insurance, Family Policy Plan could be worked out. Insurance would provide for a ward room or private room. The difference could be paid by the insured person. The policy allows for Surgical Schedule...\$300, \$150 - Hospital, extras, room and board. Information they asked for: Minors 18 years of age or over, marital status. Names of minors, date of birth, addresses, they would like the information as family group (Mother, Father, and children). Identification card will be issued. The Ute Distribution Corporation will furnish this information as soon as possible.

Letter to stockholders giving this information. They will work through Mr. Morris. Life Insurance \$5,000. will have to get information on the medical. Should have at least 100 people or more. All should come into the plan the first time, resulting in a better rate. But if anyone wanted to join in later, it could be done. Family Group Insurance--husband and wife and children. If some are not stockholders, they can participate also. They will find out to see what plan can be made and let us know.

Directors Meeting
November 14, 1963

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Mr. Morris advised us that we could hold up any dividend payment until a registered list of transfers are received from the bank, when we get the Stock Journal on Transfers, and get the judgment award check, write letter to the bank and inform them.

Division of the Ute Distribution Corporation:

Mr. Morris asked what his opinion of the resolution on the division mailed to him for his review. He stated it was all right, that this Resolution and a short letter to the stockholders with voting boxes at bottom for indication to remain or withdraw. Mr. Morris said that he did not have time to study the resolution. He had read it and would let us know his opinion in the near future.

The Board informed Mr. Morris not to take too long to do this as the division is to be made as soon as possible. The letter to the stockholders should be mailed out immediately.

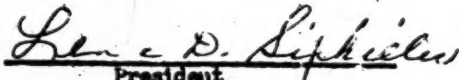
President and Secretary to see about putting the Notice in the newspapers as soon as they return home. The Notice was discussed again.

There being no further business to consider, the meeting adjourned.

Respectfully submitted,


Secretary

Approved: December 5, 1963


President

MINUTES OF DIRECTORS MEETING
UTE DISTRIBUTION CORPORATION
HELD AT SALT LAKE CITY, UTAH
NOVEMBER 14, 1963

PLTF. EX 58

President Lena D. Sixkiller called the meeting to order.

Directors present were:

Lena D. Sixkiller
Lula H. Murdock

Sarah Hackford
Preston Allen

Others present were:

George C. Morris, Esq. Corporation Attorney
Ralph D. Cowan - Vice President Trust Department
First Security Bank of Utah, N. A.
1st South and Main, Salt Lake City, Utah

Meeting with the First Security Bank Officials to discuss some very important items of business, Re: Sale of stock in the Ute Distribution Corporation by stockholders who have liens against their stock, Estates, etc.

Following business items considered:

Estates: Transfer of stock to heirs. Where there are fractional shares inherited, efforts to be made to have one heir buy up the fractional shares from the other heirs as Joint Tenants in Common, one heir can be designated to receive the check and distribute the fractional interests to each of the heirs. The Ute Distribution Corporation will be authorized to issue the check to the person designated.

There can be a Court Decree or Order of the Court making cash adjustments on fractional shares. Parents could release the fractional to the minor heirs, their children one certificate to all as tenants in common. A letter to the Ute Distribution Corporation from heirs authorizing the Board to make the division and distribution or to make check to one individual heir, then he can divide. Mr. Cowan filled out a sample form of the stock power for our use.

In cases like the one of Amerlia Daniels where there is an agreement between the heirs to give their interest to their mother during her lifetime, the Bank has special forms to take care of this.

Mr. Cowan was informed that the Corporation may not make any more dividend payments this year. The date and the amount is uncertain. We are expecting the judgment on case No. 47574 anytime.

Discussion on advertisement of Offer to Sell, conditions contained in offer as CASH and 10% deposit of total selling price submitted with bid. The selling stockholder, (certain) have not received cash, have taken second-hand cars plus some cash, but have signed an affidavit that they received all in cash. This is not on the same condition they offered to the members of the Tribe and according to the Secretary's Regulations. A notice should be published in the local newspapers. Mr. Cowan was informed that the Board had approved putting a notice in the papers. The Secretary read the notice as dictated by our attorney, Mr. Morris. If the Secretary of the Interior's Regulations are not followed, the Superintendent may get a kick-back on the affidavit. How to prove it is not true is the problem. It is the responsibility of the Superintendent to be sure the affidavit is true.

Directors Meeting
November 14, 1963

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Court Orders: Richard H. Curry on file with the Ute Distribution Corporation, awarding 1/2 of any income to his ex-wife, Refella S. Curry, of any proceeds he receives through the Ute Distribution Corporation. Hold Transfer of stock until the following has been met:

Signed release from Refella on the sale of five shares sold.
Signed statement on how the five remaining shares will be agreed to, and how income is going to be divided on these shares. Is the five shares being sold Refella's or Richards—get a statement on this.

Hold up transfer of stock of Loren Fred LaRose. He is a loan client with two loans both in delinquent status and has stock pledged as security on loans. The balance due plus interest is approximately \$10,000. Fred is selling five shares for \$2500 without getting a release from the Ute Distribution Corporation. Inform Clyde R. Murray of the situation. He is buying Richard Curry's five shares.

Hold up transfer of stock of Leonard Richard Burson until clearance has been made on his assignment to the First Security Bank of Roosevelt, also, the assignment of Clarence P. Harris, Sr. to the LDS Hospital, Roosevelt.

Distributions: Dividend payment to be made to registered stockholders as of date of distribution.

When the new certificates are signed, catch any that have liens against the stock and hold until clearance has been made.

Mr. Cowan stated that he appreciated the copy mailed to him of our letter to the Superintendent, Uintah and Ouray Agency, Fort Duchesne, Utah, listing names of stockholders who have loans, assignments, Court Orders, Court of Executions and Garnishments against their stock, on the Offers to Sell being advertised for sale, and asked that we keep him informed.

Charges on transfer of stock: \$1.00 for each new certificate issued, 8¢ per share transferred, Cost of Federal Tax.

He was informed that we would get the Court Orders of Distribution, Order determining heirs, and the other legal forms to him to transfer the stock in the near future before any more stockholders expire.

Hold up transfer of stock of Clarence P. Harris, Sr. until assignment to the Roosevelt, LDS Hospital has been cleared or released. Get a release from the hospital. Have daughter, Letha, get amount owed and have father sign it as correct, and get a receipt of payment.

There being no further business to consider, motion to adjourn was made by Sarah Hackford and seconded by Preston Allen. Meeting adjourned.

Respectfully submitted,

Sarah Hackford
Secretary

Approved: *Dec 5, 1963*
Leonard R. Burson
President

MINUTES OF DIRECTORS MEETING
UTE DISTRIBUTION CORPORATION
HELD AT FORT DUCHESNE, UTAH,
NOVEMBER 21, 1963.

President Lena D. Sixkiller called the meeting to order.

Directors present were:

Lena D. Sixkiller
Lorena D. Iorg

Sarah Hackford
Lula Murdock

Purpose of the Meeting, called to consider the transfers of stock in the Ute Distribution Corporation, new certificates issued, review the Record of Stock Transfers received from the Trust Department, First Security Bank of Utah, N. A. Salt Lake City, Utah, and other business of the corporation.

The following business taken care of:

1. Minutes of directors meetings read and approved as read on the following: September 10, 1963 - Fort Duchesne, Utah, with Agency Officials, September 10, 1963 - Directors meeting, November 5, and 9, 1963.
2. Report on checks made payable to Preston Allen for services rendered. President Lena Sixkiller reported that she had contacted Preston in Salt Lake City and asked him to either cash his checks or do something about them so that the account books could be balanced. He said that he would do this right away.
3. Glen V. Reed: Informational letter mailed to him from the Ute Distribution Corporation returned. Letter mailed to his last known address. Will mail the letter to him when we receive his new address.
4. Received a letter from the Bank of Vernal, Vernal, Utah, stating they were sorry about the oversight in not enclosing the assignment which was signed and mailed.
5. Letter from the First Security Bank of Utah, in answer to the letter from the Ute Distribution Corporation dated November 15, 1963, in which we listed the names of four stockholders who have assignments, Court Executions and Garnishments against the income from their stock. The Bank informed us that they had issued certificates for stock sold by Floyd E. Caudell and Terry Daniels before receiving our letter, however, the certificates will not be signed until clearance has been made. They were included with those forwarded to the First Security Bank of Utah, Roosevelt Branch, November 15, 1963.
6. Received a copy of a letter from Supt. M. M. Zollar to the First Security Bank, transfer Agent requesting the transfer of stock for the following stockholders:

Directors Meeting
November 21, 1963

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OWNER

Fred LaRose Burson, MB 22
Weldon Nephi Burson, MB 25

Robert George Burson, MB 28

Floyd Eugene Caudell, MB 48

Terry J. Daniels, MB 83

Christine P. Galloway, MB 114

Clarence P. Harris, Sr. MB 158

Lorraine R. Neilsen, MB 315

Willie C. Reed, MB 389

Anita Reed Reyes, MB 394

Phillip Van, Jr. MB 457
Clara J. Young Watts, MB 463

Lillian V. Young, MB 483
Nelson Roy Young, MB 485

PURCHASER(S)

R. Earl Dillman, Roosevelt, Utah

Eugene C. & Viola Y. Harnston, as
Joint Tenants R. S. c/o First
Security Bank, Roosevelt, Utah.

Jack V. & Elva Y. McLes, as Joint
Tenants R. S., Vernal, Utah, 5
Shares

Paul G. Stringham & Jeanne B.
Stringham, Joint Tenants R.S. Vernal,
Utah - 5 shares

Robert D. Huisk & Reva L. Huisk
Joint Tenants RS, Roosevelt, Utah,
5 shares.

Dick E. Bastian, Roosevelt, Utah.

Gordon E. & Clara Mae Harnston,
Joint Tenants RS, Roosevelt, Utah.

Dick E. Bastian, Roosevelt, Utah.

R. Earl Dillman, Roosevelt, Utah.

George R. & Karma Dee Miller, Joint
Tenants RS, Vernal, Utah.

R. Earl Dillman, Roosevelt, Utah.

Dick E. Bastian, Roosevelt, Utah.

Copy of a letter from M. M. Zollar Re: Stock of Rex Charles McClure,
clear and ready for transfer. Rex has an assignment on his income from
his stock in the Ute Distribution Corporation to his mother Juanita W.
Allen. His certificate will not be signed until a release on his assign-
ment has been received.

Notify Mr. Ralph D. Cowan, Vice President of the Trust Department, First
Security Bank of Utah, N. A. Salt Lake City, Utah, and Transfer Agent for
the Ute Distribution Corporation, on the Court Execution and Garnishment
against the income from stock in the Ute Distribution Corporation owned
by Bud and Christine Wyasket and request that the transfer of stock is to be
held until further notice from the Board of Directors.

Copy of a letter to John S. Boyden, dated November 18, 1963, from Wilkinson,
Cragun & Barker, Re: Ute Indian Tribe - Water and Water Rights, O&M and
Construction charges.

Directors Meeting
November 21, 1963

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Received a copy of a letter to the Area Director, Phoenix, Arizona, from Supt. M. M. Zellar in which he enclosed the resolution adopted by the Board of Directors for the Ute Distribution Corporation No. 63-UDC-26, which authorized the Claims Attorneys to incur proper and necessary expenses connected with Case No. 47567 in the U. S. Court of Claims, and Case No. 349 in the Indian Claims Commission, with request to forward on to Wilkinson, Cragun and Barker, Washington, D. C.

Received Offer To Sell Farm by Loren Fred LaRose, offering his modern home and 10 acres of land for sale to the tribe for \$12,500.

Received a letter dated November 11, 1963, from Mr. George C. Morris, enclosed a copy of a letter he wrote to Whitney D. Hammond, Attorney At Law, Vernal, Utah, Re: Loren Fred LaRose. Mr. Morris informed Mr. Hammond that Mr. LaRose had listed his property for sale through the office of the Indian Agency at Fort Duchesne, Utah, which had to be offered first to the members of the tribe before it can be offered to the general public for sale. Mr. LaRose will pay off his mortgage to the Showalter Motor Company from the proceeds.

President Lena D. Sickiller reported that she had a long distance phone call from Claudia D. Healey, a stockholder living in Idaho, asking about a dividend payment. She also reported that Mrs. Josephine Cuch, mother of Floyd E. Caudell, she had informed Lena President, that she had a phone call from Floyd and he had asked her to request the Ute Distribution Corporation not to sign the certificate issued to Jack V. and Elva Y. McLean until every thing is cleared up, his buyer wants him to take \$2500 Cash and an old car and he does not want to do this, his offer to sell to the tribe was: 5 Shares for \$4,000.00.

A discussion was held on signing the new certificates. It was decided that the President and Secretary will make a report to the directors on all transfers of stock and new certificates, so the two officers will have full support of the Board of Directors. Motion made by Lorena D. Iorg, Treasurer, that no certificates be signed until the record of stock transfers received from the First Security Bank Of Utah, Salt Lake City, Utah, has been clarified and corrected by the bank. Motion seconded by Sarah Hackford and carried by a vote of four for and none against.

New certificate numbers to be given to stockholders who have remaining shares, and new certificate numbers to be given to the purchaser. On the Record of Stock Transfers, there were the names of stockholders selling stock and the new number on the certificate representing the remaining shares but there was no name of the purchaser or his certificate number or number of shares he had purchased. This must be clarified before the certificates are signed.

Lorena D. Iorg was authorized to make a phone call to Mr. Paul Murphy, manager of the First Security Bank of Utah, Roosevelt Branch, with reference to the report on the Stock Transfer Journal received from the bank in Salt Lake City. Lorena reported that Mr. Murphy stated

Directors Meeting
November 21, 1963

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that he did not understand the report on the shares of stock which did not have the name of the purchaser or the number of shares purchased and that it would be all right to wait until the record of stock transfers could be cleared before signing the new certificates. It was decided to write a letter to Mr. Murphy and inform him of the action made at the directors meeting, also enclose Resolution No. 63-UDC-23 - Service Fees.

At this point, some of the non-Indian purchasers entered the meeting. Dick E. Bastian, Clyde R. Murray, G. Richard Murray, Lloyd Labrum, all businessmen from Roosevelt came to the meeting to find out what was holding up signing the new certificates on stock they had purchased. The Record of Stock Transfers was explained to them. President Lena Sixkiller informed them that the Ute Distribution Corporation was not refusing to sign the certificates, but that certain things had to be cleared first, such as Court Orders of Execution and Garnishments, Assignments of interests and income on the stock owned by stockholders who are selling stock, and additional information on the record of transfers, this was business that must be taken care of first.

These people were informed that their certificates would be signed as soon as possible, within the next few days. Dick E. Bastian asked if there was any reason for not signing the certificates that were clear and had nothing against them. He was informed that these certificates could be signed. He and Lloyd Labrum left for the First Security Bank to get their certificates.

While awaiting the return of Mr. Bastian and Mr. Labrum, explanations were made to the other purchasers. They were very satisfied and stated that they did not understand some of the procedures, so they came to the Board of Directors to find out, they stated that they thought the directors were doing a good job and that they had confidence in them.

Mr. Clyde R. Murray who had purchased five shares of stock from Loren Fred LaRose, he was informed that the transfer of his stock would be held up until clearance has been made. Loren Fred LaRose had sold the five shares of stock without getting a release from the Ute Distribution Corporation, that he had two loans both in a delinquent status and the income from his shares of stock was the only means Fred had of paying off his loans, and had not applied any of the proceeds from the sale of stock toward the payment of his loans. Mr. Murray stated that he had paid Fred \$2500 Cash, and wanted to know how he could get his money back. He was told that Fred was selling his home and 10 acres of land and could pay off his loans and other obligations, then the certificate could be issued and signed. Mr. Murray also reported that he had bought some stock from Rex Charles McClure and had advanced the money to him, he was informed that Rex had an assignment against his shares of stock, this would have to be cleared before the certificate could be signed. Mr. Murray stated he also bought five shares of stock from Richard Curry, he was informed that there was a Court Order against the income from his stock which must be cleared and a statement from Richard and his ex-wife Refella Curry, to clarify the status of the five remaining shares and how the income was to be divided.

Mr. Murray stated that he had purchased 85 shares of stock, the report showed 8 certificates representing 10 shares per certificate but did not show from whom he had purchased the stock, this would have to be checked out with the First Security Bank of Utah, Salt Lake City, Utah.

Directors Meeting
November 21, 1963

5

Lula Murdock and Lorena Iorg was making a trip to Salt Lake City, on personal business, they would check on this with the Bank and let him know.

Dick E. Bastian and Lloyd Labrum returned to the meeting accompanied by Mr. Paul Murphy who had the certificates to be signed. The following certificates were signed:

Certificate No.	Number of shares	To Whom Sold
492	5	Louise Allen Case
493	2	Lloyd L. & Oleta M. Labrum, JTRS
494	3	Lynn & Miriam A. Labrum, JTRS
495	5	Lynn & Miriam A. Labrum, JTRS
496	5	Lloyd L. & Oleta M. Labrum, JTRS
520	6	R. Earl Dillman
522	5	"
532	10	"
535	5	"
528	5	Robert D. & Areva L. Huish, JTRS
539	5	Dick E. Bastian
537	5	"
527	5	Paul G. & Jeanne B. Stringham, JTRS
524	5	Eugene C. & Viola Y. Harnsten JTRS
533	10	R. Earl Dillman
531	10	Dick E. Bastian
530	5	"

There being no further business at this time, Motion to adjourn made by Lorena D. Iorg, and seconded by Sarah Mackford. Motion carried by a vote of four for and none against.

The meeting adjourned.

Respectfully submitted,

Lula W. Huish
Secretary

Approved:

December 5, 1963

Lorena D. Lippincott
President

MINUTES OF DIRECTORS MEETING
UTE DISTRIBUTION CORPORATION
HELD AT ALTAMONT, UTAH, ON
FEBRUARY 13, 1964.

President Lena D. Sixkiller called the meeting to order.

Directors present were:

Lena D. Sixkiller Sarah Hackford
Lorena D. Iorg Lula Murdock

The meeting was held to consider and approve the advertisement of two land lease sales of tribal lands, 65,224.97 acres more or less, and to consider other items of business.

1. Letter received from the Realty Office, Uintah and Ouray Agency, Fort Duchesne, Utah, from Mrs. A. H. Logan, requesting the approval of the advertisement of 65,224.97 acres of tribal land and is to be advertised in two Oil and Gas Lease Sales. Application received from the Gulf Oil Company, requesting such advertisement.

Action taken:

Motion made by Lorena D. Iorg, that the Board of Directors for the Ute Distribution Corporation approve and authorize the advertisement of two Oil and Gas Land Lease Sales on 65,244.97 acres of tribal land, as recommended by the Oil and Gas Supervisor in his memorandum of February 3, 1964.

Motion seconded by Sarah Hackford and carried by a vote of four for, and none against. The following resolution was adopted by the Board of Directors:

Resolution No. 64-UDC-2
February 13, 1964.

BE IT RESOLVED BY THE BOARD OF DIRECTORS FOR THE UTE DISTRIBUTION CORPORATION, A UTAH CORPORATION, THAT, insofar as our interests in minerals are concerned, we do hereby authorize the advertisement in two Oil and Gas sales as recommended by the Oil and Gas Supervisor in his memorandum of February 3, 1964, the tribally owned lands as described in the Gulf Oil Corporation application of January 16, 1964, and modified by their letter of January 30, 1964, and

We do further authorize the President to sign the necessary forms and attested to by the Secretary.

Lena D. Sixkiller
Lena D. Sixkiller, President

Sarah Hackford
Sarah Hackford, Vice President

Lorena D. Iorg
Lorena D. Iorg, Director

Not Present
Preston Allen, Director

Lula B. Murdock
Lula B. Murdock, Director

CERTIFICATION

I, hereby certify that the foregoing resolution was adopted by the Board of Directors for the Ute Distribution Corporation under authority of the Articles of Incorporation and By-Laws, at a meeting duly called and held at Altamont, Utah, on the 13th day of February, 1964, at which meeting a quorum was present and by a vote of four for and none against.

Lula H. Hendrick
Secretary

2. President reported on the mail:

Change of Address: Merle W. Kell, General Delivery,
Roosevelt, Utah.

Lucille W. Thompson, 1438 Major Street,
Salt Lake City, Utah.

James K. Felter, 2245 Ashley,
Berkeley 5, California.

Gerald T. Eddards, 1145 Raymond,
Napa, California.

Charles Wayne Lee, 1322, Apt. "D"
Summit Street, Long Beach, Calif.

3. Letter received from Marvin County Public Welfare, Re: Information on funds paid up to date to Katherine Reed Foster, a stockholder. Answer letter and inform them that the July 17, 1963 dividend payment of \$275.00 was the last payment made, and they had the record of this payment.
4. Received a letter from Attorney David Sam, Duchesne, Utah, enclosed a copy of an assignment by Annetta R. Rayos Pike to Floyd E. Caudell for \$1,600.00, assigning one-half of her income and interests in stock in the Ute Distribution Corporation to Mr. Caudell until the \$1,600.00 is paid in full. Annetta told President Lena Sixkiller that she could not find a buyer for her five shares of stock so she is buying a car and asked Mr. Morris about her assignment, he advised her that she had to pay Floyd Caudell first.
5. Received an assignment of dividend payments executed by Hal Crumbe, to Montero D. Crumbe, dated January 10, 1964, assigning all of the income from his 10 shares of stock to Mrs. Crumbe.
6. Letter on the 1963 tax notice mailed to Merle W. Conger Kell, returned.

7. Received a copy of a letter from Superintendent M. M. Zellar, to Mr. Ralph D. Cowan, Transfer Agent, First Security Bank, Main At First South, Salt Lake City, Utah, requesting the transfer of stock in the Ute Distribution Corporation for Fred LaRose Burson, MB 22.
8. Received an assignment of income from stock in the Ute Distribution Corporation and the proceeds from sale of five shares executed by Charles Hendricks, Jr. to pay \$535.87 plus interest at rate of 8% indebtedness owed to Ivan Merrell, aka, Western Adjustment Bureau, Vernal, Utah. Assignment acknowledged and returned to sender.
9. President Lena Sixkiller gave Treasurer Lorena D. Iorg, the Record of Stock Transfers, received from the First Security Bank of Utah, Transfer Agent.
10. President Lena D. Sixkiller reported on the following:
She called Mr. R. O. Curry, Director of Resources for the Ute Indian Tribe, to get the amount of the settlement for each of the following claims:

Docket No. 44	\$3,503,104.00
Docket No. 45	4,196,896.00
Total Settlement ...	\$7,700,000.00

She called Mr. Morris and gave him the above figures, Mr. Morris informed Mrs. Sixkiller that he wanted Mr. Curry to write him and give him the above amounts for each case and sign his name.

11. Lorena D. Iorg reported:

She and President Lena D. Sixkiller contacted Mr. George R. Miller at Vernal, Utah, with reference to the check he made to purchase five shares of stock from Anita R. Reyes. Mr. Miller informed them that he had made a check payable to Dick E. Bastian and the First Security Bank of Utah, in amount of \$2,500.00, dated November 12, 1963, Number 1097, payment for five shares of stock owned by Anita Reyes. Mrs. Reyes advertised the sale to the tribe for \$3,500.00, and had negotiated the sale to Dick E. Bastian.

Mr. Miller also informed them that Joseph A. Workman had promised to give him one share of stock for what he owes him. Mr. Workman has made an assignment to Robert D. Huish, and is selling him six shares of stock. Mr. Workman advertised six shares of stock for sale to the tribe.

President Lena Sixkiller reported that John B. Gail, officer of the First Security Bank of Utah, Roosevelt Branch had informed her Mr. Huish was in the bank and gave him a check for what Mr. Workman owes George Miller, the check was made payable to Joseph Workman and George R. Miller.

President Sixkiller reported that she had informed Mr. Gail that no more certificates would be signed until the selling stockholder has received his money as advertised for the sale of his stock to the members of the tribe. Mr. Gail informed President Sixkiller that the buyer deposits part of the money in the bank (10% or more) and also the balance due is kept in the bank until the certificates are signed, then it is released to the seller.

12. Sarah Hackford reported that Albert Daniels, Jr. a loan client who got a release on five shares of stock that was pledged on his CF Loan No. 846, was not selling his five shares of stock, he was getting a loan from the Bank to pay off his loan.
13. Lorena D. Iorg reported that the Duchesne Deputy Sheriff had contacted the FBI and they will make a thorough report on Juanita Bigelow and report back. Mrs. Bigelow took John Harnes, an elderly stockholder from the Stewart Nursing Home in Roosevelt, to California without the knowledge of his relatives, Mr. Harnes has always lived on the reservation.
14. Sarah Hackford stated that some stockholders had contacted her and asked about the tax information mailed to them, they are confused on the tax report and want a break-down on the amount to be paid for 1963. Sarah also asked about the dividend payment we had discussed making, she asked when can it be made and the amount of the dividend. President Sixkiller stated that she thought we had better wait until we hear from the Comptroller General, Claims Division, Washington, D. C. in answer to our letter to him on the procedure of getting the money released. Lula Murdock stated that if the release of the judgment would take a long time, we should make a small dividend payment. It was decided to wait for the answer to our letter.
15. The Piute Suit Trial before Judge Willis Ritter, in the United States District Court, Salt Lake City, Utah, discussed. The date of the Trial has been set for February 17, 1963. Should the Board of Directors attend the Trial, it was decided that it was the duty of the directors to attend the Trial, they would leave for Salt Lake City on the 16th. Lorena D. Iorg would not be able to attend, she was scheduled to be in the hospital for surgery on that date.
16. Received a copy of a letter from Preston Allen to Mr. Robert W. Barker, Claims Attorney, Washington, D. C. with reference to the Confederated Band of Ute Indians, Case No. 327. The letter was answered by Claron C. Spencer, claims attorney. Mr. Barker was out of his office for a week. Preston was asking for information on this claim. The Board of Directors for the Ute Distribution Corporation had received a letter from Wilkinson, Cragun and Barker previously which had all this information and was discussed at a directors meeting. Preston Allen was absent from the meeting.

Directors Meeting.
February 13, 1964.

5

There being no further business to consider, Sarah Hackford made the motion that the meeting be adjourned. Motion seconded by Lorena D. Iorg and carried by a vote of four for and none against.

The meeting adjourned.

Respectfully submitted,

Lula H. Boudack
Secretary

Approved:

March 10, 1964

Lena D. Spiller
President

GEORGE C. MORRIS

ATTORNEY AT LAW

914 KEARNS BUILDING

SALT LAKE CITY 1, UTAH

January 24, 1964

Board of Directors
Use Distribution Corporation
P. O. Box 46
Fort Duchesne, Utah



Dear Board of Directors:

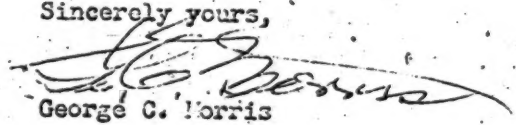
It has come to my attention that some stock certificates which have been advertised for sale have been delivered to the supposed buyer without the buyer having paid the advertised price.

To help protect the sellers, I recommend that you immediately instruct the bank at Roosevelt, and I will instruct the bank here in Salt Lake, that in the future they are not to deliver any "purchased" stock certificate to the "buyer" unless they have a receipt for payment in _____ signed by the seller, or unless the full cash purchase price is left with the bank for credit to the seller.

We should also make certain that the purchase is in accordance with the advertised offering for anything less than that is not a legal sale, and we are not then obligated to transfer the certificate. I suggest you refuse to sign any new certificates unless this preliminary requirement has been complied with.

A copy of this letter is enclosed which you may want to leave with the bank.

Sincerely yours,


George C. Morris

GCM/sw

Enc.

cc: First Security Bank

1619



AGREEMENT AND ASSIGNMENT

NOW ALL MEN BY THESE PRESENTS: That I, the undersigned SAM BUMGARNER, do by these presents agree to sell to R. EARL DILLMAN, all of my right, title, estate and interest in and to five (5) shares of the capital stock of the Ute Distribution Corporation, a Utah Corporation, the same being represented by Certificate No.

I do hereby acknowledge receipt of the sum of Twenty Five Hundred Dollars (\$2500.00), to me in hand paid by said Buyer, R. Earl Dillman.

I do hereby covenant and agree that I will transfer said Certificate to said Buyer immediately upon certification authorizing transfer of said certificate of the terms and conditions provided in Public Law 671 and in the By-Laws of said Corporation.

Should I have any legal reason to be unable to transfer said certificates to said Buyer, I hereby assign the income from said stock, either through payment of dividends or sale of said stock to any person other than the Buyer, and I do constitute and appoint R. Earl Dillman as my true and lawful attorney for me and in my name to execute and sign same stock certificate and to do any other thing required to effect the transfer of said certificate to Buyer.

DATED this 10th day of December 1965.

Signature guaranteed by

Sam Bumgarner
Not a Notary Public
correct, which


Walter K. Howard

STATE OF UTAH)

County of _____) ss.

On this 1st day of June, 1968, personally appear before me Sam Bumgarner, the signer of the foregoing instrument who acknowledged to me that he executed the same.

Commission Expires: _____


NOTARY PUBLIC
Roosevelt

16

LOUISIANA GULF CORPORATION

SUITE 614 PERE MARQUETTE BUILDING
NEW ORLEANS 12, LA.

HILLS TOOKE
CHAIRMAN OF THE BOARD

TELEPHONE
523-1967

February 25, 1964

Mr. Paul Murphy, Manager
First Security Bank of Utah
Roosevelt, Utah

Dear Mr. Murphy:

Thanks very much for the newspapers and all of the indian news. As your letter states, since I am now a tribesman I will have to get up there and see my holdings.

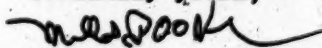
I am part Cherokee myself but the Cherokees never did have any oil on their property. They are known as the most intelligent indians but it seems they did not come into any rich oil land.

I will read the papers more closely at home this evening but in glancing over same here at the office, from what you sent me, it seems you have a very progressive community and I believe that the stock I have has a great potential. If you have any more for sale and the price is right, let me know.

I do appreciate very much the courtesies shown me in this matter and I hope I have the pleasure of seeing you in Roosevelt or possibly here. If you come to New Orleans, I will put you in the Roosevelt Hotel, which is one of our swank hotels. You will feel at home there, being from Roosevelt and staying in the Roosevelt Hotel.

Again my thanks and let me know what is going on with the tribesmen.

Cordially yours,



Mills Tooke

MT/gv



1661

sent E - j haw

May 29, 1964

Walter K. Howard
15 Douglas Drive
Olney, Illinois

Dear Mr. Howard:

I am enclosing two Ute Distribution Stock Certificates, No. 728 and 729, representing 5 shares each. I am forwarding them to you as per your instructions. Five thousand dollars has been delivered to the seller, Carl Dillman.

The 10 shares which you have purchased from Margaret Van Sprouse have not yet arrived. When these certificates arrive, I will forward them to you.

Yours truly,

Verl Haslem
Assistant Manager

VH:bp

Enclosures



1665

August 10, 1964

Robert E. Shaw
Dixon Evening Telegraph
Dixon, Illinois

Dear Mr. Shaw:

I was happy this morning to receive your Cashier's Check in the amount of \$10,000.00 and also your check payable to our Bank in the amount of \$11.00, with which to purchase 20 shares of Ute Distribution Corporation Stock. When you called me on the telephone from San Francisco, I was under the impression that I was to purchase this stock for you and between that time and the present, I had negotiated for and had committed your money, upon it's arrival, to 4 different sellers for the purchase of this stock.

Your Cashier's Check is payable to Mr. Olive Sprouse who is not the seller of the stock which I had negotiated to purchase. I am returning your checks air mail asking that you write a new check payable to the Bank so that I can complete the purchase of the stock which I had promised. However, if you have already arranged to have Mr. Sprouse locate this stock for you, please return the check as it is and I will proceed accordingly.

I am enclosing for your information, a copy of a letter which the directors of the Ute Distribution Corporation delivered to their members. Paragraph 4 is of particular interest to you as this judgment is still pending. It will be a very good dividend upon it's settlement.

If you have other friends in your locality who are interested in the purchase of this stock, I am satisfied that I can round up



1667

some more stock for them. They may send their funds to me with their instructions as to the amount which they are willing to pay per share and how they desire the stock certificate to be issued. Due to the trust nature of this stock, it takes approximately 30 days from the date that the stockholder sells his interest before a new certificate can be issued. We hold the purchaser's money on escrow until we receive the new stock certificate correctly made out in his name before his funds are released to the seller.

Yours truly,

Vehi Haslam
Assistant Manager

VH:bp

Enclosures

COPY

1668

in the ... of Stocks of Life that have been purchased & Resold to Robert Shaw during 1968 Sept to Oct.

<u>Indrain</u>	<u>No. of Shares</u>	<u>my cost</u>
Clarence Harris Jr.	5	2000.00
Albert Samuels Jr.	2	800.00
Julius Murray	5	2000.00
Irene Benson	5	2000.00
Elmer Hackford	5	2000.00
Albert Samuels Sr.	3	1200.00
Stacy Reed	1	250.00
Glen Reed	5	2000.00
Hal Crumbo	10	3900.00
	<u>46</u>	<u>19,150.00</u>

1600.00 cost of referral - 4 shares purchased sent to Waller K. How
17,550.00

91.00 traveling exp in:
 19.00 phone calls

19,860.00

Sales price $\frac{46}{500.00}$ per share
23,000.00



23000.00
 19860.00
3,140.00 profit

SAVING OF UTAH
NATIONAL ASSOCIATION
ROOSEVELT, UTAH

No. 59-23444

DATE

OCT 30, 1944

PAYABLE TO

San Elmer County Bank

\$ 100.00

PURCHASER

Paul H. H. and Paul H. H.

~~For cash to the order of the~~ **NEGOTIABLE**
~~Paul H. H. and Paul H. H. are the owners of the~~
~~amount, this is the receipt for the same.~~

witness
John H. H.

Opal M. Montis
Opal Coleman
Opal Montis

1670

April 2,

Philip Arkansas
Cherokee, North Carolina

Dear Philip:

The Ute Distribution Corporation has returned to us your Ute Stock Certificate for 6 shares. The balance of your shares as you are aware was sold. Will you please advise me as to what you would like done with your certificate. If you would like me to hold it for you, I will do so. If you would like it mailed to you, I will be happy to follow your request.

If you are interested in selling any of these shares, a gentleman here would like to pay to you \$400 per share for any number which you would like to sell. If you wish to sell, please sign the enclosed Stock Power and return the same to me in the self-addressed envelope and tell me how many shares you would like sold. Upon receipt of this form, I will mail immediately to you a Cashiers Check for \$400 per share for the number of shares which you are selling.

Yours truly,

Verl Haslem
Assistant Manager

VH:ub



1674



First Security Bank of Utah

NATIONAL ASSOCIATION

ROOSEVELT OFFICE

ROOSEVELT, UTAH

July 8, 1964



Glen Reed
306 Redondo Avenue
Salt Lake City, Utah

Dear Glen:

I am enclosing an assignment for you to sign to file with the Corporation in connection with your agreement to sell your stock to me.

I would appreciate it if you would mail this back and upon filing it with the Corporation I would then be able to advance you a little more money.

Very truly yours,

John A. Gale
Assistant Manager

JBG:ub

MEMBER FIRST SECURITY CORPORATION SYSTEM
LARGEST INTERMOUNTAIN BANKING ORGANIZATION

1695

6527

TO WHOM IT MAY CONCERN:

I, Bernice I. Vannoy, am this day authorizing John Gale of Roosevelt, Utah, to bargain for purchase and have issued to my name Ute Distribution Corporation Stock at a price of \$500 per share.

Bernice I. Vannoy

Subscribed and sworn to before me this 5th day of May, 1964.

John Gale
Notary Public
Roosevelt, Utah

My Commission Expires October 2, 1966

1696

65(B)

LOUISIANA GULF CORPORATION

MILLS TOOKE
CHAIRMAN OF THE BOARD

SUITE 614 PERE MARQUETTE BUILDING
NEW ORLEANS, LA. 70112

TELEPHONE
542-1697

December 1, 1965



Mr. Calvin Anderson
Transfer Agent
First Security Bank of Utah
Salt Lake City, Utah

Dear Calvin:

Herewith find enclosed certificate No. 1126 and 1306, each for two (2) shares, for which please transfer to Mr. W. T. Piper. 1X4 - 1442

Mr. George Morris left five (5) shares to be transferred to Mr. W. T. Piper with you, in addition to the above four shares

Dick Tooke is sending you in eleven (11) shares. Please transfer five (5) shares to Mary Moore Gayle, one (1) share to George R. Page, Jr., and the other five (5) shares to me.

I am in a hurry to get this off so you can get it transferred on Friday, which I will appreciate. If you do, you might get another snicker.

With kindest regards and sincere appreciation for your many courtesies, I remain

Most cordially yours,

Mills
Mills Tooke

MT:ldg
Enclosures (2)

1697



Plaintiff's Exhibit
5
1-20-66
HLS

6432 North 44th Avenue
Glendale, Arizona
7/9/64

Dear Nick:

Thanks for sending down the proxies, however, most of the people I sold are out of town right now. Enclosed herewith is Mr. Gyllstrom's proxy, but Jasper is Wickburg, Frost in Mesa, Carpenter in Phoenix, and Woods in Sedona are not here.

Make sure John Gale has Mrs. Gyllstrom's home address. It is 1943 West Adams, Phoenix, Arizona.

John tells me Phelps in Show Low sent in the balance to make the total sent in \$13,000.00. Be sure and tell him to deposit my amount to my account there as quickly as possible - I could always use it. ha ha

In the letter John sent to some of our prospects, he indicated that in two or three months they could probably pick his stuff up at around \$600 a share. If that be the case, you certainly are not buying it for \$500.00 - so I think we could have an agreement as to how much I can expect on stock sold at various prices. As you know, there is no incentive to sell it to John for \$600, and then he hold out \$530.00 per share. In other words, as long as it moves here at least \$550 per share, I'll go along with the \$530.00. But, if you let it go there for around \$600.00 to my clients, then you'd have to come up on the other end to at least guarantee me around \$125 to 150 per share. Agreed?

Hope all is going well there for you. Keep me posted and I'll get some more of this sold; if we can only get some of these people to act. As soon as Hal gets back from Utah next we'll call you to get something settled for money we have there in the bank to pick up the check for Hutchinsons. We've talked to you about this before, but I'm afraid they're going to ask for their money back and then we'll all be the losers.

So long.

Edmo.

Please note that the above address is MY address. The last address you used was Hal's.

1701

B-10

Roosevelt, Utah
February 13, 1965



Dear *Verna Lopez*

The records of the Ute Distribution Corporation disclose that you are presently a stockholder in this corporation.

I am desirous of purchasing some additional stock in this corporation and if you are interested in selling your stock or any part of it, would you please call me collect at Roosevelt 223.

Very truly yours,

Dick E. Bastian

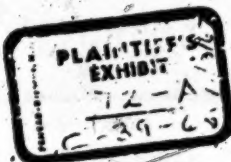
Dick E. Bastian

1703

AFFIDAVIT

Ref' Ex #3
12-23-65
n.p.

STATE OF UTAH)
)
COUNTY OF DUGLASS)



I, _____, being first duly sworn
do pose and say that I have received this date the sum of \$ _____
receipt of which is hereby acknowledged, which constitutes payment
in full for _____ shares of stock in the Ute Distribution
Corporation paid to me by _____.

Dated this _____ day of _____ 19____.

Ute Distribution Corporation
Stock Certificate Number

Subscribed and sworn to before me this _____ day of
_____ 19____.

Notary Public

Residing at: _____

My Commission Expires:

1706



May 5, 1965

First Security Bank

Delding, Michigan

Dear Sir:

I am very sorry to have delayed answering your letter of April 15 in regard to Monte H. Montes wanting to borrow money against his Ute Distribution Stock. This stock is in a corporation which has 4000 shares and has no liquid assets. They have part interest in the oil and mineral rights on the Ute Indian Reservation located in Utah. The stock has been selling from \$300.00 to \$500.00 per share but there is no certain market for it.

If you desire to make a loan against this stock, it would be well that you take an assignment on the stock as well as any dividends and have it acknowledged by the Corporation. The present president is Mrs. Lona Sixkiller, whose address is Fort Duchesne, Utah. I would have the assignment acknowledged prior to disbursing any loan funds as they are anticipating a dividend from a claim settlement against the government.

Very truly yours,

John B. Gale
Assistant Manager

JBG:bp

1707

OFFICE
IONIA
BELDING
SARAHAC

FIRST SECURITY BANK

BELDING OFFICE
BELDING, MICHIGAN

April 15, 1965,

First Security Bank of Utah, N. A.
Roosevelt, Utah,

Attention Mr Gale,

Dear Mr. Gale:

A young man by the name of Monte R. Montes, of Fenwick, Michigan was in this morning, offering me 7 shares of stock in the Ute Distributing Corporation. He claims this stock is worth \$400.00 a share. He also claims he receives fairly large dividends on same.

While we do not normally deal in an unlisted stock, I did agree to write to you asking information on same, as to whether these checks are dividends, or liquidation. In addition if we were to make a loan against same how could he be protected, both from his dividends, and in case of necessity, whether there is a firm market value on same. It appears he is in some financial difficulty and would like to raise funds against same, without selling. He has a letter offering him \$300. a share, but claims his dividends are so good he would prefer borrowing against the stock.

Thanking you for whatever information you might wish to give me, I remain

Yours very truly,

Paula Churchill
Sr. Vice President.

1708

September 8, 1964



Department of the Interior
Bureau of Indian Affairs
Uintah and Ouray Agency
Fort-Duchesne, Utah

Attention: M. L. Schwartz, Superintendent

Gentlemen:

We are in receipt of your letter of August 31, 1964, with stock powers enclosed regarding Glen McHardock, Jr., and Oran F. Curry.

You are correct in assuming that as of August 27, 1964, the Bureau's involvement regarding the sale and transfer of shares was completed. All transactions concerning this stock are now handled directly through our office.

We no longer accept stock powers for the transferring of the stock. We require the stockholders to obtain their certificates and fill out the assignment on the back of it if they desire to transfer or sell it.

Very truly yours,

GEA:mb

Calvin E. Anderson
Administrative Assistant

1712

AFFIDAVIT

STATE OF UTAH)

: ss.

County of _____)

I, Martin Reed, being first duly sworn

depose and say that I have received this date the sum of \$2,500.00

receipt of which is hereby acknowledged, which constitutes payment in

full for Five shares of stock in the Ute Distribution Corporation

(~~Name erased - different one entered - ? (AM)~~)

paid to me by Dick E. Bastian Roosevelt, Utah

DATED this 13 day of February 1964.

Ute Distribution Corporation

Stock Certificate No.

383

Martin Reed

Signature guaranteed by:
officer of First Sec. Bank

Verl Haslam

Subscribed and sworn to before me this 13 day of Feb.

1964.

Dick E. Bastian

NOTARY PUBLIC

Residing at:

Roosevelt, Utah

Commission Expires:



1740

Plaintiffs Exhibit
PBF

AFFIDAVIT
and BILL OF SALE to stock

The undersigned (now
red) added to Affidavit
after it had been
signed - ?

STATE OF UTAH)
County of Duchesne) ss.

I, Arlene Ella Burson Gardner, being first duly sworn
depose and say that I have received this date the sum of \$3,500.00,
receipt of which is hereby acknowledged, which constitutes payment in full
for Five shares of stock in the Ute Distribution Corporation paid
to me by Dick E. Bastian, and do hereby transfer, convey and assign (5) shares
of said stock, represented by Certificate # 19, to said Dick E. Bastian.

Dated this 23 day of March 1964.

Ute Distribution Corporation
Stock Certificate Number

19

Arlene Ella Burson Gardner
4242W. 3375 South Salt Lake City, Ut.

Subscribed and sworn to before me this 23 day of March 1964.

Dick E. Bastian
Notary Public

Residing at: Roosevelt, UT

My Commission Expires:

May 29th 1965



1757

Duchene

Rita Jean R. Tabbee, being first, do hereby

certify that I have received this date the sum of \$ 1400⁰⁰

by Dick "E" Bastian
Roosevelt, Ut.

this 12 day of June 1964

MB 381

Rita Jean R. Tabbee
Roosevelt Ut.

and sworn to before me this 12 day of
June 1964

Dick E Bastian
Notary Public

Residing at: Roosevelt, Utah

May 28th 1965



1786

1-6-64

AFFIDAVIT

STATE OF UTAH)
COUNTY OF Duchesne)

I, Julius Murray, being first duly sworn
depose and say that I have received this date the sum of \$ 1000.00
receipt of which is hereby acknowledged, which constitutes payment
in full for One shares of stock in the Ute Distribution
Corporation paid to me by Dick E. Bastian of Roosevelt, Ut.

Dated this 29 day of July 19 64.

Ute Distribution Corporation
Stock Certificate Number

305

Julius Murray
Roosevelt, Ut

Subscribed and sworn to before me this 29 day of
July 19 64.

Dick E. Bastian
Notary Public

Residing at: Roosevelt, Utah

My Commission Expires:

May 28th 1965



1701

AFFIDAVIT

and

BILL OF SALE

STATE OF UTAH)

County of Duchesne) ss.

I, Julius Murray Roosevelt, Ut., being first duly sworn
depose and say that I have received this date the sum of \$ 1,000.00,
receipt of which is hereby acknowledged, which constitutes payment in full
for One shares of stock in the Ute Distribution Corporation paid
to me by Dick E. Bastian Roosevelt, Utah, and do hereby transfer, convey and
assign one (1) share of said stock, represented by Certificate #305 to said
Dick E. Bastian.

Dated this 23 day of March 1964.

Ute Distribution Corporation
Stock Certificate Number

305

Julius Murray
Roosevelt, Ut.

Subscribed and sworn to before me this 23 day of March
1964.

Dick E. Bastian
Notary Public

Residing at: Roosevelt, Utah

My Commission Expires:

May 28th 1965

1732



THIS CERTIFIES THAT

Investable only on the basis of
Creditable property and assets

SALT LAKE CITY

is the owner of
Shares of the Stock of

the Corporation in the hands of the holder Army is given by the Attorney upon order of this
IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be
signed by its duly authorized officers and to be sealed with the seal of the Corporation
this _____ day of _____ A.D. 19____

WARNING

This certificate does not represent stock in an ordinary business corporation. This
corporation is organized for the purpose of distributing to the stockholders in the future
their respective shares in the proceeds of income from all claims and assets in which
the railroad stockholders of the Utah Indian Tribe of the United and Quarry Reserve-
tion, Utah have or will have an interest under the provisions of Public Law 671-3rd
Congress, approved August 27, 1934, 48 Stat. 864, as amended. The future value of,
or return on, this stock cannot be determined. This stock certificate should neither be
sold nor encumbered by the owner thereof, but should be retained and preserved for
the benefit of the stockholder and the stockholder's family.

SECRETARY

PRESIDENT

NOTICE OF RESIGNATION ON TRANSFER

Resignation of this certificate at any time prior to August 27, 1954, to a person not a partner in the business of the United and Eastern Corporation, shall be void and the certificate shall be null and void and the holder thereof shall be liable for the same.

Notice of this resignation shall be given to the Secretary of the United and Eastern Corporation, and the resignation shall be effective only if the same is approved by the Board of Directors of the United and Eastern Corporation.

Resignation of this certificate at any time prior to August 27, 1954, to a person not a partner in the business of the United and Eastern Corporation, shall be void and the holder thereof shall be liable for the same.

CERTIFICATE

FOR

UNITED AND EASTERN CORPORATION

UTE DISTRIBUTION CORPORATION

ISSUED TO

RECEIVED

For Value Received hereby sell, assign and transfer unto

\$

Shares

of the stock represented by the within Certificate, and do hereby irrevocably constitute and appoint _____ Attorney to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises.

Dated _____, 19____

In presence of _____

NOTICE: THE SIGNATURE ON THIS ASSIGNMENT MUST BE CONSIDERED WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE, IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATSOEVER.

ELMO G. MATHEWS
6432 N. 44TH AVE.
GLENDALE, ARIZONA

Checks		Deposits	Date	Balance
	Balance Forward	825.00 +	MAY 5/64	825.00 *
400.00 -			MAY 7/64	425.00 *
		260.00 +	MAY 8/64	685.00 *
100.00 -		299.00 +	MAY 11/64	984.00 *
150.00 -			MAY 11/64	884.00 *
300.00 -	10.00 -		MAY 12/64	734.00 *
			MAY 13/64	424.00 *
		850.00 +	MAY 15/64	1,274.00 *
128.54 -	100.00 -		MAY 15/64	1,045.46 *
299.00 -	150.00 -		MAY 19/64	596.46 *
7.00 -			MAY 20/64	588.56 *
600.00 -		800.00 +	MAY 21/64	838.56 *
5.00 -	11.00 -		MAY 22/64	821.14 *
		100.00 +	MAY 22/64	921.14 *
226.54 -			JUN 1/64	694.87 *
			JUN 1/64	694.60 * JUN 1
625.00 -	39.52 -		JUN 8/64	30.08 *
.65 - SC			JUN 17/64	29.43 *
.65 - SC			JUL 15/64	28.78 *
25.00 -			JUL 22/64	3.78 *
500.00 -		1,700.00 +	AUG 11/64	1,203.78 *
1,000.00 -			AUG 17/64	203.78 *
.55 - SC			AUG 18/64	203.23 *
100.00 -			AUG 19/64	103.23 *
		145.00 +	SEP 2/64	248.23 *
50.00 -			SEP 10/64	198.23 *
.65 - SC			SEP 16/64	197.58 *
150.00 -			SEP 21/64	47.58 *
10.00 -			SEP 22/64	37.58 *
		500.00 +	OCT 5/64	537.58 *

1855

ELMO G. MATTHEWS
6432 N. 14TH AVE.
GLENDALE, ARIZONA

Sheet No.

Checks	Deposits	Date	Balance
		OCT 8 '64	537.58*
Balance Forward		OCT 8 '64	37.58*
500.00 -		OCT 14 '64	36.93*
.65 - SC		200.00 + OCT 14 '64	236.93*
		OCT 16 '64	36.93*
200.00 -		430.00 + OCT 23 '64	16.93*
450.00 -		995.00 + NOV 7 '64	11.93*
1,000.00 -		905.00 + NOV 16 '64	16.93*
900.00 -		NOV 18 '64	16.28*
.65 - SC		NOV 20 '64	15.23*
1.00 - DM		DEC 16 '64	14.43*
.85 - SC			

1856

WINDO G. MATHEWS
6832 NO. LATH AVE.
GLENDALE, ARIZONA

Sheet No.

Checks	Deposits	Date	Balance
Balance Forward \$		DEC 31'64	18.43 + DEC 31'64
	450.00 +	JAN 11'65	464.43 +
.50 - SC		JAN 20'65	463.93 +
763.93 - DM	300.00 +	JAN 20'65	763.93 +
		FEB 9'65	.00 +

1857

Edna S. Mathews

Checking Accounts (2)

DATE OF CHECK 8-13-64
AMOUNT 100.00
PAYABLE TO Edna S. Mathews
DATE PAID 8-19-64

DATE OF CHECK 9-2-64
AMOUNT 50.00
PAYABLE TO Edna S. Mathews
DATE PAID 9-10-64

DATE OF CHECK
AMOUNT 654
PAYABLE TO Service Charge
DATE PAID 9-16-64

DATE OF CHECK 9-11-64
AMOUNT 150.00
PAYABLE TO Edna S. Mathews
DATE PAID 9-21-64

DATE OF CHECK 9-12-64
AMOUNT 10.00
PAYABLE TO Hanger Land Corp
DATE PAID 9-24-64

DATE OF CHECK 10-1-64
AMOUNT 500.00
PAYABLE TO Edna S. Mathews
DATE PAID 10-9-64

DATE OF CHECK
AMOUNT 654
PAYABLE TO Service Charge
DATE PAID 10-14-64

DATE OF CHECK 10-9-64
AMOUNT 200.00
PAYABLE TO Symma Evans
DATE PAID 10-16-64

DATE OF CHECK 10-15-64
AMOUNT 450.00
PAYABLE TO Edna S. Mathews
DATE PAID 10-23-64

DATE OF CHECK 11-27-64
AMOUNT 1000.00
PAYABLE TO Edna S. Mathews
DATE PAID 11-3-64

DATE OF CHECK
AMOUNT 900.00
PAYABLE TO
DATE PAID 11-16-64

DATE OF CHECK
AMOUNT 654
PAYABLE TO Service Charge
DATE PAID 11-18-64

DATE OF CHECK
AMOUNT 1.00
PAYABLE TO Return check charge
DATE PAID 11-20-64 735.00
Edna Mathews dated 11-12-64

DATE OF CHECK
AMOUNT 854
PAYABLE TO Service Charge
DATE PAID 12-16-64

DATE OF CHECK
AMOUNT 504
PAYABLE TO Service Charge
DATE PAID 1-20-65

DATE OF CHECK 2-9-65
AMOUNT 767.93 D.M.
PAYABLE TO Charge to Edna account J.B.
DATE PAID 2-9-65

DATE OF CHECK
AMOUNT
PAYABLE TO
DATE PAID

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PAYABLE TO
DATE PAID

1858

DEPOSITED IN THE
ROOSEVELT OFFICE
FIRST SECURITY BANK OF UTAH
NATIONAL ASSOCIATION
ROOSEVELT, UTAH

In receiving these for deposit or collection, this Bank acts only as depository of the same, and assumes no responsibility beyond the exercise of due care. All funds are credited subject to final payment in each individual credit. This check will not be liable for direct responsibility of its duly selected correspondent bank in transit, and its correspondence selected shall not be held responsible for its own negligence. This check or the correspondence may and must be returned to the sender, either by registered mail or by express, and arrival of such a duly chosen bank or any other before final payment, without payment of fee, may then draw on any bank, or on any other branch office of this bank. A check given by this branch office or bank for an item drawn on it shall be guaranteed, and subject to collection at or before the end of the business day following that on which the item is deposited, to which the bank is bound and liable for any reason.

B2 PLEASE LIST EACH CHECK SEPARATELY
AND BANK ON WHICH DRAWN

CURRENCY		DOLLARS	CENTS
COIN			
CHECKS AS FOLLOWS			
Q7-107	1	825	00
	2		
	3		
	4		
	5		
	6		
	7		
	8		
	9		
TOTAL DEPOSIT		825	00

Name Elmer H. Matthews
Address 6432 N. 44th Ave.
Glendale, Arizona
4 Date May 4 1964
SEE THAT ALL CHECKS AND DRAFTS ARE ENDORSED

DEPOSITED IN THE
ROOSEVELT OFFICE
FIRST SECURITY BANK OF UTAH
 NATIONAL ASSOCIATION
 ROOSEVELT, UTAH

In receiving money by deposit or collection, this bank acts only as depository of the money and assumes no responsibility beyond the service of the bank. All items are received subject to final payment in cash or correct credits. This bank will not be liable for checks or signatures of its duly authorized correspondents nor for money in transit, and each correspondent so selected shall not be liable except for proper endorsements. This bank or the correspondent may send money directly to the payee, by any bank including the payee, and accept its draft, check, or other bank obligation or conditional payment in lieu of cash. It may also bank at any time before final payment, whether returned or not, any draft drawn on any bank, or on any other bank's order of this bank. A credit shall be made immediately or made for an item drawn on it shall be provisional, and subject to collection at or before the end of the business day next following day on which the item is deposited, in which the bank is bound not payable for the return.

PLEASE LIST EACH CHECK SEPARATELY
 AND BANK ON WHICH DRAWN

CURRENCY	DOLLARS	CENTS
	260	00
COIN		
CHECKS AS FOLLOWS		
<i>Hyattsville</i>	1	
	2	
<i>Spokane</i>	3	
	4	
	5	
	6	
	7	
	8	
	9	
TOTAL DEPOSIT	260	00

Name *Elmer Mathews*
 Address *6432 N 44th Ave*
 City *Glendale, Ariz.*
 23 Date *5-8-64*

SEE THAT ALL CHECKS AND DRAFTS ARE ENDORSED

DEPOSITED IN THE
ROOSEVELT OFFICE
FIRST SECURITY BANK OF UTAH
 NATIONAL ASSOCIATION
 ROOSEVELT, UTAH

In receiving items for deposit in collection, this Bank acts only as depositor's collecting agent and assumes no responsibility for the accuracy of the same. All items are credited subject to final payment by the remitting bank. This Bank will not be liable for drafts, checks, or other selected correspondence sent for money in transit, and a corresponding check shall not be liable except for its own value. It is the depositor's responsibility to send items, directly or indirectly, to the bank, and to the bank, and accept for draft, check, or credit or other selected correspondence, whether received or not, any item drawn on any bank or other financial institution. A credit given for this transfer is not a liability of the bank. It shall be the depositor's responsibility to see that the item is properly drawn and that the bank is paid in full for any reason.

PLEASE LIST EACH CHECK SEPARATELY
 AND BANK ON WHICH DRAWN

		DOLLARS	CENTS
CURRENCY		850	00
COIN			
CHECKS AS FOLLOWS			
Woods	1		
Stark	2		
Shaw	3		
	4		
	5		
	6		
	7		
	8		
	9		
TOTAL DEPOSIT		850	00

Name Erno Mathews
 Address 6432 N. 44 Ave
 City Glendale, Arizona
 26 Date 5-15-64
 SEE THAT ALL CHECKS AND DRAFTS ARE ENDORSED

[illegible]

PLEASE LIST EACH CHECK SEPARATELY AND NAME ON WHICH DRAWN			DOLLARS	CENTS
CURRENCY				
COIN				
	CHECKS AS FOLLOWS			
	1			
	2			
	3			
	4			
	5			
	6			
	7			
	8			
	9			
	TOTAL DEPOSIT		\$50	00

Name Edna Mathews
Address _____

29 Date 5-21 19 64
WE TRUST ALL CHECKS AND DRAFTS ARE ENDORSED

DEPOSITS IN THE
ROOSEVELT OFFICE
FIRST SECURITY BANK OF UTAH
NATIONAL
ASSOCIATION
ROOSEVELT, UTAH

[illegible]

CURRENCY		DOLLARS		CENTS	
COIN					
CHICKS AS FOLLOWS					
	1				
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	4				
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	6				
	7				
	8				
	9				
TOTAL DEPOSIT					

Edna S. Matthews
6432 No. 44th Ave.

5 Glendale, Arizona Date 5-25-68
SEE THAT ALL CHECKS AND DRAFTS ARE ENDORSED

1863
ROOSEVELT, UTAH
ASSOCIATION
FIRST SECURITY BANK OF UTAH
ROOSEVELT OFFICE
DEPOSITED IN THE
NATIONAL

[illegible]

PLEASE LIST EACH CHECK SEPARATELY AND BANK ON WHICH DRAWN		DOLLARS	CENTS
CURRENCY			
COIN			
CHECKS AS FOLLOWS			
1 <i>Pay to order of</i>			
2 <i>Pay to order of</i>			
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99 <i>Pay to order of</i>			
100 <i>Pay to order of</i>			
TOTAL DEPOSIT		1700	00

Elmer Mathews

31 Date 8-11-64
SEE THAT ALL CHECKS AND DRAFTS ARE ENDORSED

WATER TREATMENT

PLEASE LIST EACH CHECK SEPARATELY
AND BANK ON WHICH CASHED

Name Elmo J. Matthews

City 444 Date 10-20-68
SEE THAT ALL CHECKS AND DRAFTS ARE ENDORSED

5
NOV 2 1954
Research, Utah

CASH		DOLLARS	CENTS
Please send cash by Registered Mail			
1			
2			
3			
4	91-2654		
5			
6			
7			
8			
9			
TOTAL DEPOSIT		995	00

ck - 91-265/121 - 99510

POSITIVELY. UTAM!

PLEASE LIST EACH CHECK SEPARATELY
AND BANK ON WHICH PAID.

Elms. & Matthews

47 Date 11-16-68
SEE THAT ALL CHECKS AND DRAFTS ARE ENDORSED

Murray, Brian Cono

10.

PERCUTANEOUS • Bony density, R. A.

CITIZEN	DATE	PURCHASER
7	June 3, 1964	Bernice I. Vannoy
782	December 21, 1964	John B. Gale
31	November 14, 1963	Clyde R. Murray
58	March 8, 1964	Ferna E. Murray
615	August 23, 1964	Bernice I. Vannoy
19	July 1, 1964	Newman C. Petty
788	July 28, 1964	Dick E. Bastian
116	August 25, 1964	Neal H. Phelps
823	September 23, 1964	Ethor C. Phelps
172	April 2, 1964	G. Richard Murray
673	August 25, 1964	Dick E. Bastian
173	November 14, 1963	Tallace A. Davis
500	February 18, 1964	Margaret Davis
178	November 14, 1963	G. Richard Murray
501	March 2, 1964	Dick E. Bastian
309	September 4, 1964	George H. Miller
384	January 2, 1964	Karina Dee Miller
553	August 23, 1964	Clyde R. Murray
262	May 7, 1964	Clyde R. Murray
724	September 23, 1964	Clyde R. Murray
263	June 3, 1964	Clyde R. Murray
767	October 23, 1964	John B. Gale
281	August 25, 1964	Ruby E. Gale
838	September 1, 1964	Dick E. Bastian
308	July 9, 1964	Dick E. Bastian
308	July 9, 1964	Roy E. Gordon

Murray, Harris Marcel	307	March 24, 1964	Kenneth M. Phillips	5
	667	August 25, 1964	Kay E. Houston	5
			Emelyn Houston	
Neilson, Norman V.	314	March 2, 1964	Velma Frandsen	10
			Dean Frandsen	
Neilson, Lorraine R. Reed	315	November 14, 1963	Dick E. Bastian	10
Neilson, Selbert Lehart	320	December 12, 1963	Clyde R. Murray	5
	551	February 18, 1964	Clyde R. Murray	5
			Erna E. Murray	
Reed, Melvin X	380	March 24, 1964	G. Richard Murray	10
Reed, Martin	383	March 6, 1964	Dick E. Bastian	5
	626	May 7, 1965	Leon B. Mypper	
			Veda T. Mypper	2
			D. Blain Hadley	2
			Karna J. Hadley	1
			W. Elmer Hadley	
			Edith Hadley	
Reed, Robert Merio X	360	May 7, 1964	G. Richard Murray	5
	726	September 1, 1964	LeRoy Harrod	1
			Clive Sprouse	4
Reed, Louis Russell	362	August 25, 1964	Neal H. Phelps	10
			Esther C. Phelps	
Reed, Stacey Cobb, Sr.	379	November 14, 1963	F. Grant Hanson	5
	507	March 6, 1964	Rita S. Hanson	1
	713	September 23, 1964	Bernice I. Vannoy	5
Royes, Robert Gerald	397	August 25, 1964	R. Earl Dillman	5
	811	September 16, 1964	Bernice I. Vannoy	10
Taylor, Richard Donald	436	August 25, 1964	R. Earl Dillman	10
Van, Phillip, Jr.	457	November 14, 1963		

1868

Hoopes, Letha Harris C	467	November 13, 1963	Clyde R. Murray
	623	March 6, 1964	James E. Hoopes
	556	September 16, 1964	Verna Hoopes
	623	September 16, 1964	Korvol R. Johnson
	922	October 16, 1964	Fern Johnson
	958	November 12, 1964	James W. Hoopes
Atwood, Gloria Young	484	August 25, 1964	Verna Hoopes
Young, Nelson Roy	483	November 14, 1963	John B. Gale
	538	October 8, 1964	Kuby E. Gale
Curry, Richard Henry C	68	November 14, 1963	John B. Gale
	499	September 10, 1964	Dick E. Bastian
	896	September 23, 1964	Dick E. Bastian
			Jerry Murray
Hackford, Linda Russell C	134	August 31, 1964	G. Richard Murray
Taylor, Geneva Ellen	856	February 12, 1965	Gordon E. Hamerton
	290	February 10, 1964	Clara Mae Hamerton
			Clyde R. Murray
			Wallace A. Davis
			Margaret Davis

NOTE: Not stockholders

Murray, Lucinda Gardner
Hendricks, Iva Madams

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SUMMARY OF OIL SHALE DATA
TESTIMONY OF F. W. CHRISTIANSEN
OCTOBER 18, 1967

UNIT NO. 1

1,000 million contour barrels per square mile

<u>Red</u>	<u>Blue</u>	<u>Totals</u>
2950 acres (4.64 square miles)	480 acres	
<u>4,600,000,000 barrels</u>	<u>125,000,000 barrels</u>	4,725,000,000

UNIT NO. 2

900 to 1,000 million contour barrels per square mile (950 average)

<u>Red</u>	<u>Blue</u>	<u>Totals</u>
6460 acres (10 square miles)	1350 acres (2.1 square miles)	
<u>9,500,000,000 barrels</u>	<u>1,990,000,000 barrels</u>	11,490,000,000

UNIT NO. 3

800 to 900 million contour barrels per square mile (850 average)

<u>Red</u>	<u>Blue</u>	<u>Totals</u>
6460 acres (10 square miles)	1350 acres (2.1 square miles)	
<u>17,000,000,000 barrels</u>	<u>191,000,000 barrels</u>	17,191,000,000

UNIT NO. 4

700 to 800 million contour barrels per square mile (750 average)

<u>Red</u>	<u>Blue</u>	<u>Totals</u>
10,940 acres	7,960 acres	

1003

Page 2

<u>Red</u>	<u>Blue</u>	<u>Totals</u>
(17.1 square miles) <u>12,825,000,000</u> barrels	(12.4 square miles) <u>9,300,000,000</u> barrels	22,125,000,000

UNIT NO. 5

600 to 700 million contour barrels per square mile (650 average)

<u>Red</u>	<u>Blue</u>	<u>Totals</u>
16,670 acres (26 square miles) <u>16,900,000,000</u> barrels	10,480 acres (16.4 square miles) <u>10,660,000,000</u> barrels	27,560,000,000

UNIT NO. 6

500 to 600 million contour barrels per square mile

<u>Red</u>	<u>Blue</u>	<u>Totals</u>
28,920 acres (45 square miles) <u>24,750,000,000</u> barrels	20,910 acres (32 square miles) <u>17,600,000,000</u> barrels	42,350,000,000

UNIT NO. 7

400 to 500 million contour barrels per square mile (450 average)

<u>Red</u>	<u>Blue</u>	<u>Totals</u>
27,170 acres (42 square miles) <u>18,900,000,000</u> barrels	29,780 acres (46.5 square miles) <u>20,700,000,000</u> barrels	39,600,000,000

UNIT NO. 8

300 to 400 million contour barrels per square mile (350 average)

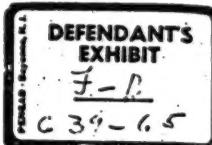
<u>Red</u>	<u>Blue</u>	<u>Totals</u>
28,760 acres (43 square miles) <u>15,050,000,000</u> barrels	43,600 acres (68 square miles) <u>23,800,000,000</u> barrels	38,850,000,000

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UNIT NO. 9

200 to 300 million cubic barrels per square mile

<u>Red</u>	<u>Blue</u>	<u>Totals</u>
25,640 acres (40 square miles) 10,000,000,000 barrels	18,380 acres (28 square miles) 7,000,000,000 barrels	<u>17,000,000,000</u>
	Total Red	129,525,000,000
	Total Blue	<u>91,366,000,000</u>
	TOTAL	<u>220,891,000,000</u>



CERTIFIED COPY OF RESOLUTION
OF THE
BOARD OF DIRECTORS
OF
UTE DISTRIBUTION CORPORATION
PORT DUCHESNE, UTAH

appointing First Security Bank of Utah, N.A.

Transfer Agent

RESOLVED:

FIRST: That First Security Bank of Utah, N.A., of Salt Lake City, Utah is hereby appointed as Transfer Agent for the transfer of all the shares of Capital Stock of this Corporation.

SECOND: That the said Transfer Agent is hereby authorized to make transfers, when presented to it for such purpose, of said certificates, and to countersign and deliver new certificates accordingly when the same shall have been executed by the President or Vice President, and Secretary under the seal of this Corporation, and to keep the necessary records in connection therewith.

THIRD: That specimen signatures of the officers of this Corporation, authorized to sign or countersign certificates of stock as aforesaid, be lodged forthwith with the Transfer Agent, to be used by it for purposes of comparison with signatures appearing on the certificates of stock of this Corporation presented to it for transfer, and that the Transfer Agent be protected and held harmless in recognizing and acting upon any signature believed in good faith to be genuine. When any officer of this Corporation shall no longer be vested with authority to sign for this Corporation written notice thereof shall immediately be given to the Transfer Agent and, until receipt of such notice, the Transfer Agent shall be fully protected and held harmless in recognizing and acting upon certificates bearing the signature of such officer or a signature believed by it in good faith to be such genuine signature.

FOURTH: That from time to time additional officers may be appointed by resolutions of the Board of Directors of this Corporation not inconsistent with its By-Laws to sign certificates of stock on behalf of this Corporation, and in every such case certified copies of the resolutions affecting the appointments and specimen signatures of such officers shall forthwith be lodged with the Transfer Agent.

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FIFTH: In the event that any such certificate shall become lost or destroyed before any new certificate or certificates shall be issued in lieu thereof, a satisfactory bond shall be required in accordance with resolutions adopted by the Board of Directors of this Corporation, in a sum not less than the amount fixed by the Board of Directors of the Corporation wherein the Transfer Agent shall be named as one of the obligees. The bond shall be in form and substance satisfactory to the Transfer Agent.

SIXTH: That when the Transfer Agent deems it expedient, it may apply to counsel for this Corporation, or to its own counsel, for instructions or advice, and for any action in accordance with such instructions or advice this Corporation will fully protect and hold it harmless from any and all liability.

SEVENTH: That the Transfer Agent may employ agents or attorneys in fact and shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such agent or attorney shall have been selected with reasonable care; nor shall the Transfer Agent be liable for anything whatever in connection with this agency, except for its wilful misconduct and gross negligence.

EIGHTH: That the Transfer Agent be and it is hereby authorized and directed to prepare and deliver lists of the stockholders of this Corporation, only upon the order of the President or the Vice President and Treasurer or the Secretary, of this Corporation.

NINTH: That the Transfer Agent may at any time resign and cease to act by giving thirty days' notice in writing to this Corporation and by refunding such proportion of the compensation as shall have been paid but not earned at the time of such resignation.

TENTH: That the Transfer Agent be and it shall be entitled to reasonable compensation for all services rendered by it in the execution of its duties, as well as all its reasonable expenses necessarily incurred and actually disbursed in the performance of such duties, all in accordance with the written contract between the Corporation and the Transfer Agent.

ELEVENTH: That the Secretary of this Corporation be, and he hereby is directed to certify a copy of these resolutions under its seal, and to lodge a certified copy with the Transfer Agent, together with (1) specimens of the stock certificates adopted by this Corporation; (2) specimens of the signatures of the officers of this Corporation duly authorized to sign said certificates; (3) a certified copy of the Charter or Articles

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of Incorporation, including any amendments thereto; (4) a certified copy of the By-Laws of this Corporation; and to furnish to the Transfer Agent certified copies of any amendments that may from time to time be made to the Charter or Certificate of Incorporation or By-Laws.

STATE OF UTAH)

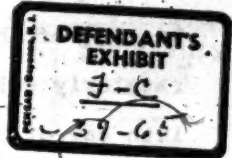
COUNTY OF UINTAH)

I hereby certify that I am the Secretary of Ute Distribution Corporation; that the above and foregoing is a full, true and complete copy of a resolution duly and regularly adopted by the vote of a majority or more of the directors of the said corporation at a meeting of the Board of Directors of said corporation duly and regularly called, noticed and held at Fort Duchesne, Utah, on the 12th day of January, 1959, at which meeting a quorum was present and acting, and I was present and acted as Secretary.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of said corporation this 12th day of January, 1959.

(Signed) Lula H. Murdock

(Lula H. Murdock)



CERTIFIED COPY OF RESOLUTION NO. 59-2
OF THE
BOARD OF DIRECTORS
OF
UTE DISTRIBUTION CORPORATION
FORT DUCHESNE, UTAH

WHEREAS, the Board of Directors of the Ute Distribution Corporation has by Resolution No. 59-1 appointed the First Security Bank of Utah, N.A., of Salt Lake City, Utah as transfer agent for the transfer of all the shares of stock of this corporation; and

WHEREAS, said transfer agent desires to enter into an agreement with the Ute Distribution Corporation covering the employment of said bank as transfer agent; and,

WHEREAS, the Board of Directors has approved an agreement with said transfer agent;

NOW THEREFORE, BE IT RESOLVED, That the President or Vice President of the Ute Distribution Corporation be and he is authorized to execute said agreement with said transfer agent on behalf of the corporation and also signature of the President or Vice President shall be attested to by the Secretary of the Ute Distribution Corporation.

STATE OF UTAH)
 : SS.
COUNTY OF UINTAH)

I hereby certify that I am the Secretary of the Ute Distribution Corporation; that the above and foregoing is a full, true and complete copy of a resolution duly and regularly adopted by a vote of a majority or more of the directors of said corporation at a

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meeting of the Board of Directors of said corporation duly and regularly called, noticed and held at Fort Duchesne, Utah on the 12th day of January, 1959, at which meeting a quorum was present and I acted as Secretary.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said corporation this 7th day of March, 1959.

(Signed) Lula H. Murdock
(Lula H. Murdock)

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NATIONAL ASSOCIATION
O ROOSEVELT OFFICE

ROOSEVELT, UTAH

September 23, 1963

*Return to
Carol Zupersky*

Mr. S. Sixkiller, President
Ute Distribution Corporation
P.O. Box 1000, Blanding, Utah

Dear Mr. Sixkiller;

Reference is made to our discussion with members of your Board of Directors as to the procedure to be followed when a stockholder of Ute Distribution Corporation wished to sell his stock. We believe the following procedure would be satisfactory:

1. He would notify the Agency of his desire to sell all or a part of his stock using the form provided to indicate the price at which the stock is offered.
2. Notice of the offer would be posted by the Agency as required by the Regulations. It would be our suggestion that the notice should be posted for a period of thirty days if the Regulations can so provide.
3. The Board of Directors of the Ute Distribution Corporation should see that they are informed by the Agency when stock is offered for sale so that they can contact other stockholders who might be interested in buying the stock. We, as Trustees for the minors, would also like to be notified.
4. If an offer to sell is accepted by a member of the Tribe, he must make a deposit of at least 10% of the purchase price, paying any balance due within thirty days. It is our suggestion that payments be made through the Agency.
5. When the offer is accepted by a member of the Tribe, a stock power in the form enclosed should be executed by the selling stockholder assigning the shares sold to the purchaser. This stock power should be deposited with the Agency. The signature of the selling stockholder should be guaranteed by a bank or witnessed by an official of the Agency.

MEMBER FIRST SECURITY CORPORATION SYSTEM
LARGEST INTERMOUNTAIN BANKING ORGANIZATION

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NATIONAL ASSOCIATION

ROOSEVELT OFFICE

ROOSEVELT, UTAH

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Mrs. Lena D. Sixkiller - Ute Distribution Corporation
September 23, 1963

6. When the stock has been paid for in full, the stock power should be forwarded to us by the Agency with a letter of transmittal listing the name and address of the individual or individuals to whom new certificates are to be issued. This letter should be accompanied by a remittance to cover our transfer fee of \$1.00 for each new certificate issued and Federal Stock Transfer Tax at the rate of \$0.08 for each share sold.
7. We will then proceed to issue new certificates as instructed. If all shares are not sold, a new certificate for the unsold shares will be issued in the name of the selling stockholder.
8. All new certificates issued will be forwarded to our Roosevelt Office to be signed by the proper Officers of Ute Distribution Corporation and to have the seal of the Corporation affixed.
9. If the person who accepts the offer does not pay all of the purchase price within thirty days as required, the stock power will be returned to the selling stockholder.

In the event the offer to sell is not accepted by a member of the Tribe within the time permitted by the Regulations, then it would appear the following procedure should be followed:

1. The stockholder offering this stock for sale will be notified by the Agency that his offer has not been accepted by a member of the Tribe and that he is free to sell his stock at a price not less than that indicated in his offer to sell.
2. When he has found a buyer he will furnish the Superintendent with evidence satisfactory to the Superintendent that a sale has been made at a price not less than that indicated in the offer to sell, and will deposit with the Superintendent a stock power assigning the shares sold to the purchaser.
3. The Superintendent will then forward the stock power to us furnishing the name and address of the purchaser and endorsing his certificate to the effect that the selling-stockholder has first offered his stock to members of the tribe as required by law and the Regulations of the Secretary of the Interior. Remittance for transfer fees and stock transfer tax must also be made.

MEMBER FIRST SECURITY CORPORATION SYSTEM
LARGEST INTERMOUNTAIN BANKING ORGANIZATION

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First Security Bank of Utah
NATIONAL ASSOCIATION
ROOSEVELT OFFICE

ROOSEVELT, UTAH

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Lena D. Sixkiller-Ute Distribution Corporation.

September 23, 1963

4. We will then issue the certificate to the purchaser for the shares sold, issuing another certificate to the selling stockholder for any shares not sold.
5. As in the case of stock sold to members of the Tribe, the new certificates will be mailed to our Roosevelt Office for signing by the Corporations and affixing the seal.
6. The certificate issued in the name of the purchaser may then be delivered to him upon taking his receipt to be forwarded to us for our files.

In the case of a deceased stockholder, before his certificate can be reissued we must be furnished either with a certified copy of a Decree of Distribution of a State Court or with a photo copy of an Order Determining Heirs entered by the Office of the Examiner of Inheritance of the Department of the Interior. We must, of course, be furnished with the addresses as well as the names of the persons to whom the new certificates are to be issued. A remittance to cover a transfer charge of \$1.00 for each certificate issued and of \$0.08 for each share to be transferred must also be made. If the stock is to be transferred pursuant to a Decree of Distribution of a State Court, we should also have a stock power signed by the Executor or Administrator. From this point on the procedure will be the same as in the case of shares sold.

Whenever any certificates are transferred, we will send you a copy of our Stock Transfer Journal so that you can keep your records up to date. We, in turn, would like to be furnished with the names of those who have made assignments of distributions due them on their shares of stock. The Superintendent of the Agency should also be notified of these assignments.

It is our intention to refuse to issue certificates for fractional shares of stock. Therefore in the case of decedents the heirs should agree among themselves with respect to any adjustments that must be made to avoid fractional shares.

Three extra copies of this letter are enclosed for your use and a copy is also being sent to Mr. Zollar.

Please feel free to contact us at any time you have any questions in regard to the transfer to your stock.

Yours very truly,

FIRST SECURITY BANK OF UTAH
National Association

RDC:bm
cc; Mr. M. H. Zollar
enclosures.

MEMBER FIRST SECURITY CORPORATION SYSTEM
LARGEST INTERMOUNTAIN BANKING ORGANIZATION

Ralph D. Cowan
Vice President

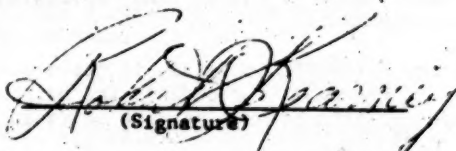
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20240

JUN 8 1966

Pursuant to Title 28, section 1733, United States Code, I hereby
certify that each annexed paper is a true copy of a document
comprising part of the official records of the Bureau of Indian
Affairs, Department of the Interior:

Plan for distribution of the assets of the individual
mixed-blood members of the Ute Indian Tribe, Uintah and
Ouray Reservation, Utah.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and
cause the seal of the Bureau of Indian Affairs to be affixed on
the day and year first above written.


(Signature)

Certifying Officer,
(Title)



Dated ?

PLAN FOR DISTRIBUTION OF
THE
ASSETS OF THE INDIVIDUAL MIXED-BLOOD
MEMBERS OF THE UTE INDIAN TRIBE
UINTAH AND OURAY RESERVATION, UTAH

PURSUANT TO PUBLIC LAW 671
83RD. CONGRESS - 2ND. SESSION (68 STAT. 868)
AND FOR OTHER PURPOSES

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PLAN FOR DISTRIBUTION OF THE ASSETS OF THE INDIVIDUAL MIXED-BLOOD MEMBERS OF THE UTE INDIAN TRIBE, UINTAH AND OURAY RESERVATION, UTAH PURSUANT TO PUBLIC LAW 671, 83d. CONGRESS - 2nd. SESSION (68 STAT. 868) AND FOR OTHER PURPOSES.

L. Plan for Distribution to Individuals.

Section 13 of said Public Law 671 provides in part, as follows:

"Sec. 13. After the adoption of a plan for the division of the assets between the two groups, a plan for distribution of the assets of the Mixed-blood group to the individual members thereof shall be prepared and ratified by a majority of said group, within the period of six months from such adoption and presented to the Secretary for approval *** **

This plan is submitted pursuant to said section.

11. Mixed-Blood Organization.

Section 6 of said Public Law provides:

"Sec. 6. The mixed-blood members of the Tribe, including those residing on and off the reservation, shall have the right to organize for their common welfare, and may adopt an appropriate constitution and by-laws which shall become effective when ratified by a majority vote of the adult mixed-blood members of the tribe at a special election authorized and called by the Secretary under such rules and regulations as he may prescribe. Such constitution may provide for the selection of authorized representatives who shall have power to take any action that is required by this Act to be taken by the mixed-blood members as a group *** **

Pursuant to said Section 6, it is proposed that an appropriate constitution and by-laws be approved by said mixed-blood group. A proposed constitution and set of by-laws is attached to this plan, Marked Exhibit "A" and by reference made a part thereof.

The constitution and by-laws should be presented to the mixed-blood group immediately after publication of the final roll of mixed-blood members of the Tribe as provided in Section 8 of the Act.

Rules and regulations governing the special election for the adoption of a Constitution and by-laws should be prepared by the Secretary in anticipation of the event, because immediate decisions will be required of the mixed-blood group after the final publication of the rolls.

111. Legal Counsel.

Section 7 of said Public Law provides:

"Sec. 7. The Mixed-blood members of the Tribe as a group may employ legal counsel to accomplish the legal work required on behalf of said group under the terms of this Act, and for any other purposes by them deemed necessary or desirable; the choice of counsel and fixing of fees to be subject to the approval of the Secretary until Federal Supervision over all of the members of said group and their property is terminated in the manner provided in Section 16 of this Act"

It is proposed that said Mixed-blood group, through its authorized representatives will employ legal counsel under a negotiated contract for such period as may be required to transact its legal business.

IV. Disposal of Certain Lands.

Section 9 of the Act provides in part as follows:

"Sec. 9. The Business Committee of the Tribe for and on behalf of the Full-blood members of said Tribe, and the duly authorized representatives for the Mixed-blood members of said Tribe, acting jointly, are hereby authorized, subject to the approval of the Secretary, to sell, exchange, dispose of, and convey to any purchaser deemed satisfactory to said committee and representatives, any or all of the lands of said Tribe described as follows, to wit:

"All such sales, exchanges, or other dispositions shall be made upon such terms as said committee and said authorized representatives shall deem satisfactory and may be made pursuant to bids or at private sale, and all funds or other property derived from such sales, exchanges, or other dispositions shall be subject to the terms of this Act. Consent by the Tribal Business Committee and said Authorized Representatives to the sale, exchange or other disposal of the lands herein described shall relieve the United States of any liability resulting from such sale, exchange or other disposition".

It is proposed that the duly authorized representatives for the Mixed-blood group will act jointly with the Business Committee of the Full-blood group in the disposal of the lands described in Section 9 of the Act to the end that lands nonusable by either of said groups can be converted into cash or usable property and thus made susceptible to immediate division. It is not anticipated that large sums of revenue will be obtained from such sales, but it is essential to dispose of the lands in order to complete the division.

It is further proposed that possibilities for sales, exchanges or other dispositions be explored by the appropriate Government officials and officials of the Tribe, even before division of the assets of the reservation, as any information thus obtained will greatly aid in expediting the program.

V. Sales to Assignees.

Section 9 of the Act further provides as follows:

"Sec. 9. The Tribal Business Committee and said authorized representatives are further authorized to sell or dispose of Tribal assigned lands to the assignees thereof under such terms and conditions as may be agreed upon by the said Tribal Business Committee and said authorized representatives with the assignees, subject however, to the approval of the Secretary."

It is proposed that all Mixed-blood members of the Tribe currently holding tribal assignments shall be canvassed to determine whether said assignees desire to purchase the land they are now using. After estimates as to value have been obtained, negotiations will be opened with all assignees desiring to purchase their assignments with a view of disposing of said land before any division is made between the two groups, the proceeds therefrom to be divided between the groups as their interests shall appear. The assignees will be given a limited period of time to disclose their intention. The limitation shall commence to run after service of a written notice upon said assignees allowing them a specified period of time in which to signify their intention to purchase or abandon the assignments they occupy but in no event shall they be allowed less than thirty days from the date of service of such notice.

VI. Technical Assistance.

Section 10 of the Act provides, in part, as follows:

"Sec. 10. The Secretary is authorized to provide such reasonable assistance as may be requested by both groups, or by either group, in formulation and execution of a plan for

the division of said assets, including necessary technical assistance of Government employees at Fort Duchesne, Utah, and transportation necessary to enable the representatives of Federal, State, and Indian Affairs Offices of the State of Utah and tribal divisions thereof, and members of the Tribe."

Section 13 of the Act provides, in part, as follows:

"Sec. 13. . . . The Secretary is authorized to provide reasonable assistance, including necessary technical assistance of Government employees at Fort Duchesne, Utah, and transportation necessary, as aforesaid, to representatives of Federal, State, and Indian Affairs Offices of the State of Utah and tribal divisions thereof, as may be required by the Mixed-blood group in the preparation of such plans."

It is anticipated that in the division of the assets between the groups, it will be necessary for the technical advisers to determine not only the classification of the various lands, but the carrying capacity and other data in order to arrive at a fair value, or other basis for division between the groups. The information thus acquired will also be of great value in the plan for distribution of the assets to the individual members of the Mixed-blood group, as hereinafter more specifically described.

The Area Office is urged to immediately send additional technical help to Fort Duchesne in order to accomplish said work within a reasonable length of time. It is felt that the character of the work required warrants a priority over routine work, since the distribution under the Act will permanently relieve the Federal Government from many of the duties heretofore required of it.

VII. Assets Not Susceptible to Equitable and Practicable Distribution

Section 10 of the Act further provides, as follows:

"Sec. 10. . . . All unaggregated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall be conveyed jointly by the Tribal Business Committee and the Authorized Representatives of the Mixed-blood group, subject to such supervision by the Secretary as is otherwise required by law, and the net proceeds therefrom after deducting the costs chargeable to such management, shall first be divided between the Full-blood and Mixed-blood groups in direct proportion to the number of persons comprising the final membership roll of each group and without regard to the number of persons comprising each group at the time of the division of such proceeds."

It is proposed that a corporation be formed under the laws of the State of Utah to receive all income belonging to the Mixed-blood group from the theretofore unadjudicated or unliquidated claims against the United States, all income from oil, gas and mineral rights of every kind and from all other assets not subject to any equitable or practicable distribution. This corporation shall be organized not for purposes of profit, but shall be incorporated with a view of complying with the tax exemption provisions of State and Federal law with the major purpose of distributing to its stockholders the net revenues from such sources.

Each person included upon the final Mixed-blood roll as provided in Section 8 of the Act will be issued ten shares of stock in said corporation. The stock of the corporation will be subject to transfer, devise or descent. Officers of the corporation will be designated by authority from the stockholders for participation in the joint management of such assets from which the corporate income is derived, with the Tribal Business Committee of the Full-blooded group. The powers of the corporation shall be limited to distribution of said assets and the powers necessarily incident thereto.

Delegation of management powers by the original stockholders will provide a means of restricting the management to the interested parties. Thus, if a Mixed-blood member disposes of his stock he will no longer have a voice in having the Mixed-blood delegates act with the Business Committee of the Full-blooded Indians. Conversely, transferees, legatees and heirs will acquire a voice in such management as their interests are acquired.

VIII. Division of Other Assets, Except Cash.

Section 13 provides in part as follows:

" * * The plan for division of the assets among the members of the Mixed-blood group may include:

" * * (2) Partition of the lands of the Mixed-blood group, excepting all gas, oil, and mineral rights, to corporations, partnerships, or other legal entities, and to trustees, and the individual members of said groups, quality and quantity relatively considered, according to the respective rights and interests of the parties, located so as to achieve, as far as practicable, any improvements lawfully made by the person or persons receiving such land. The value of the improvements made, under a valid lease or assignment to the Tribe, shall be excluded from the valuation in making allotments to the lessee or assignee, and the land shall be valued without regard to such improvements unless the lease or assignment, under which said improvements were made, provided that such improvements should become the property of the tribe. In the making of any partition not consider-

ation shall be given to all of the rights and interests of the person or persons receiving the property, and all of the rights and interests of the other members of the tribe. Two or more of the members of said Mixed-blood group may obtain their share of property as tenants in common, as joint tenants, or in any other lawful manner when such members agree among themselves as to the manner in which they desire to receive such title. When it appears that an equitable partition cannot be made among the members of said Mixed-blood group without prejudice to the rights and interests of some of them, and yet a partition is directed by the group, the members of said group may voluntarily determine compensation to be made by one party to another on account of the inequity. In all cases where equity is agreed upon by the members of said Mixed-blood group, such compensatory adjustment among the parties, according to the principles of equity, must be approved by the Secretary. In the event of a failure to agree upon an equitable compensatory adjustment among the parties the Secretary shall ~~make~~ ^{make} such adjustment and his decision shall be final."

Valuation of all land, exclusive of mineral rights, shall be made.

All land distributed to the mixed-blood members of the Tribe pursuant to the Act shall be classified as to type, and recommendation shall be made as to feasible units for use by the mixed-blood members of the Tribe.

In determining feasible or economic units, other holdings of the members receiving such property shall be taken into consideration. Mixed-blood members may have their Tribal Assignment, or leased property, or a part thereof, distributed to them, as their interests may appear, in accordance with the foregoing Section 13 (2); provided, of course, that those holding assignments have not purchased the assigned property as provided in Section V of this plan. Parts of assignments or leases when taken as an individual distributive share must be so taken as to not impair the value of the remaining part to the injury of the rights of the other members of the Mixed-blood group, or owelty payments may be required to do ^{substantial} justice.

Section 13 (3) provides that the Mixed-blood plan for division of the assets may include:

"Organization of corporations for the grazing of livestock, handling of water and water rights, and the shares therein may be issued to the members of said group in proportion to their interests in the assets of such corporations. When, in the opinion of said mixed-blood group, it is to the best interest of said group to transfer a portion of the assets of said group to a corporation, or other legal entity, for any purpose, the Secretary is authorized to make such transfer."

Range land shall be divided into feasible or economic units, taking into consideration natural boundaries, avoiding fencing, insofar as that is possible. Effort shall also be made to divide sheep range from cattle range.

Areas more difficult to enclose by natural boundaries and fencing may be designated as sheep range to be utilized by herding of the flocks. By way of illustration, if a particular canyon is adapted to cattle range and is bounded by ledges or other natural boundaries avoiding or at least assisting in enclosing the same, the carrying capacity of the whole canyon will be determined and after that capacity has been determined, one share of stock will be issued for each unit sufficient to allow one cow to graze for five months in a normal or average year. Those interested then in acquiring range can easily determine the number of shares required in order to accommodate the number of cows anticipated to be run upon such range.

The shares of stock in this manner can be much more readily distributed than the range which such shares represent. A range company organized in this manner can be incorporated under the laws of the State of Utah with such powers as are usually granted to grazing corporations in this State, deriving sufficient of its income from assessment of its stock to comply with the tax exemption provisions of the law. Sheep range can be organized and managed by a corporation in a similar manner, issuing stock in a direct relationship with the carrying capacity of the range, but also in relationship to the stock issued in cattle corporations. This relationship can be maintained by issuing one share of stock for each unit sufficient to allow four head of sheep to graze for five months in a normal or average year. The maintenance of the relationship between one share of stock in any of the range companies, whether cattle or sheep, is desirable for two purposes; first, it will facilitate the distribution of the stock to the Mixed-blood members, and second, in the event a cattle range company should desire to change its operations to sheep, or, in the event a sheep corporation should desire to change its operations to cattle, standard relationships of one cow to four sheep would assist materially.

Shares of stock distributed to members who have no present use for the same may be leased or sold at the will of the holder thereof subject to the articles of incorporation and by-laws of the corporation and in accordance with law.

If the property distributed to the Mixed-blood group requires the organization of irrigation companies in order to provide for an equitable or advantageous distribution of water, such companies shall be organized prior to the transfer of the water rights and the land to be irrigated. Accrued operation and maintenance charges on tribal land will be paid by the tribe before distribution with the possible exception of when equities might require a different handling.

Transfer to trustees as provided in Section 13 (4) of the Act is not contemplated under this plan, except in case of a failure to otherwise accomplish an equitable division.

Section 13 (5) of the Act provides that the plan may include:

"Sale of any portion of the assets of said group subject to the approval of the Secretary. In addition to the sales herein otherwise authorized, authority is granted to the authorized representatives of said group to sell any property of said group when, in the opinion of the majority of said Mixed-blood group, a practicable partition cannot be made, or for any other reason it is deemed to be the best interests of the group, and the proceeds of such sales shall be distributed equitably among the members of said Mixed-blood; after deducting reasonable cost of sale and distribution".

It is proposed that if in the development of this plan a practicable partition cannot be made or for any other reason it is deemed to be the best interest of the group, property may be sold in accordance with said Section 13 (5).

Section 12 of the Act provides in part as follows:

"Section 12 Any other division, partition or distribution of property to any individual mixed-blood member made pursuant to this Act shall be subject to a mortgage to be made in favor of the tribe securing the payments of all sums of money owed by him to the tribe on the date of such division, partition or distribution to the said individual mixed-blood member. The Secretary shall require the execution of any mortgage required hereunder as a condition to any such division, partition or distribution".

It is intended to strictly comply with this provision of the law, However, members will be encouraged to make loans from private sources to clear their indebtedness with the tribe and thus enable a distribution free of encumbrances.

IX. Cash Distribution.

Section 11 of the Act provides as follows:

"Notwithstanding any other provision of existing law, the tribal funds now on deposit or hereinafter deposited in the United States Treasury to the credit of the tribe or either group hereof, shall be available for advance to the tribe or the respective groups, or for expenditure, for such purposes, including per capita payments, as may be designated by the Tribal Business Committee for the Full-blood members, and by the authorized agents of the

mixed-blood members, and in either event subject to the approval of the Secretary; Provided, that the aggregate amount of the expenditures and advances authorized by this section for the mixed-blood group shall not exceed 50 per centum of the total funds of said mixed-blood group after such division, until said mixed-blood group has adopted a plan approved by the Secretary for termination of Federal supervision of said mixed-blood group, as required under section 13 hereof. After termination of Federal Supervision per capita payments to the mixed-blood group shall not be subject to approval of the Secretary".

Section 12 of the Act provides in part as follows:

"Fifty per centum of all per capita payments to any individual mixed-blood member made pursuant to any division or distribution hereunder shall have deducted therefrom any sum, or sums, of money owed by such member to the tribe, whether due or to become due, unless in the opinion of the Secretary said debts are not adequately secured, in which event the entire per capita payment shall be subject to such off-set".

Per capita payments are subject to these provisions.

It is proposed that a per capita ^{\$1.50} payment of \$4,500.00 be made; the balance of approximately \$1,500.00 per person to remain in the United States Treasury to provide for the reserves as set out in Section 13 (1), as follows:

"(i) the proportionate share of said mixed-blood group in and to all expenses incurred in effecting the purposes of this Act, including, but not limited to, the necessary expense incurred under Section 13 and 14 of this Act.

"(ii) the just and proportionate share of the mixed-bloods in the expense incurred in the prosecution of the claims of the tribe, or the bands thereof, against the United States; and

"(iii) the determinable and estimated administrative costs and expense of any mixed-blood organization authorized by this Act, including lawful and reasonable salaries and fees of authorized agents, officers and employees of said mixed-blood group."

The provisions of the foregoing are conditions precedent to distribution of the Assets of the Tribe under the Act.

It is anticipated that this cash per capita payment will be made upon approval of this plan for distribution by the Secretary of the Interior.

I. Community Activities.

It is not anticipated that the Mixed-blood group will allocate any funds for joint welfare, law and order, education, or other similar purposes. The Mixed-blood members are to become unrestricted citizens of the State in which they live, sharing in the responsibilities and advantages of the State just as other citizens do. Exemption from property taxes will expire pursuant to the terms of this Act. They will be freed from all special Indian Federal controls, except as to their oil and gas rights, their claims against the Government, and as their other assets not at this time susceptible to equitable and practicable distribution.

For the objects of the Mixed-blood group, let us look to the Preamble to the Constitution of the Affiliated Ute Citizens of the State of Utah (Exhibit "A"), which provides, among other things, that the organization is;

" * * * looking to more effectively comply with the legal requirements of the United States Government and all political subdivisions to which we are, and are to become, subject, to manfully assume the new obligations in justice now to be required of us, * * *, encourage desirable and amicable relations with other citizens of our respective communities and to promote the general welfare of all."

Through the appointment of committees and the undertaking of worthy projects it is hoped to foster and encourage participation of individual mixed-blood people in the civic affairs of the cities, towns, counties, States and the Nation. Equal rights and equal privileges are obtained by sharing in common with other citizens the civic, social and religious responsibilities that fall upon any given community. We can best "preserve the cultural values we may possess" by sharing them with our fellowmen. We organize for our common welfare, but as we approach our ultimate goals, our activities in political parties of our choice, service clubs, Parent-Teachers Associations, affairs of State, and religious institutions as our individual consciences shall dictate,

Will overshadow the decreasing functions of our original organization much the same as a mother teaches her child to first walk and then unselfishly trains the one she loves best to do without her. We are not unmindful of the coming pains of readjustment, but we pledge our best efforts and seek Divine guidance in our every decision. We can do no other.

Submitted by the Mixed-blood Group

ALBERT H. HARRELL,	Chairman
PRESTON V. ALLEN,	Vice-Chairman
LORENA D. JORG,	Secretary
LULA H. MURDOCK,	Member
SARAH HACKFORD,	Member
JUANITA McCLURE,	Member

JOHN S. BOYDEN,
Legal Counsel

SUPPLEMENT TO
PLAN FOR DISTRIBUTION OF
THE
ASSETS OF THE INDIVIDUAL MIXED-BLOOD
MEMBERS OF THE UTE INDIAN TRIBE
UINTAH AND OURAY RESERVATION, UTAH

PURSUANT TO PUBLIC LAW 671
83RD. CONGRESS - 2ND. SESSION (68 STAT. 868)
AND FOR OTHER PURPOSES

SUPPLEMENT TO PLAN FOR DISTRIBUTION OF THE ASSETS OF
THE INDIVIDUAL MIXED-BLOOD MEMBERS OF THE UTE INDIAN
TRIBE, UINTAH AND OURAY RESERVATION, UTAH, PURSUANT
TO PUBLIC LAW 671, 83RD CONGRESS - 2ND SESSION (68
STAT. 868) AND FOR OTHER PURPOSES.

The original plan of the mixed-blood members of the Tribe
contains the following statement:

"Community Activities"

"It is not anticipated that the mixed-blood group
will allocate any funds for joint welfare, law and order,
education, or other similar purposes. The mixed-blood
members are to become unrestricted citizens of the state
in which they live, sharing in the responsibilities and
advantages of the state just as other citizens do. Ex-
emption from property taxes will expire pursuant to the
terms of the Act. They will be freed from all special
Federal controls, except as to their oil and gas rights,
their claims against the Government, and as to their
other assets not at this time susceptible to equitable
and practicable distribution."

The mixed-blood group has been asked to reconsider its pre-
vious position with regards to "Law and Order". Section 5 of Public
Law 671 provides:

"Effective on the date of publication of the final
rolls as provided in section 8 hereof the tribe shall
thereafter consist exclusively of full-blood members.
Mixed-blood members shall have no interest therein
except as otherwise provided in this Act."

The State of Utah cannot assume territorial jurisdiction over
the real property of the mixed-blood members until distribution of
that real estate has been made. It was sincerely hoped that the
United States Government would sense a responsibility for the mainte-
nance of law and order among the mixed-blood people for this limited
period. The last and fateful step in termination of Federal guardian-
ship over the mixed-bloods and

their dividable assets has been taken. It is not readily understandable why the Government should insist that sorely-needed funds, should be diverted from personal planning to collective law and order plans in which the mixed-bloods have but a passing interest. Mixed-bloods who have left the Reservation rarely have left personal property requiring protection. The incidents of lawlessness against their interests in real property justifies but little contribution to a law and order program. Investment in capital assets of the Indian Police Department should be limited by the anticipated period the contributors are to be within the Department's jurisdiction. These and other pertinent factors will be taken into consideration in negotiating a cooperative program between the Ute Indian Tribe and the Affiliated Ute Citizens of the State of Utah immediately after the organization of both groups has been perfected and after it has been definitely determined what, if any, contribution the United States Government intends to make while the division of assets takes place under its supervision.

Submitted by the Mixed-Blood Group

LULA H. MURDOCK,	CHAIRMAN
LORENA D. IORG,	VICE-CHAIRMAN
ELIZABETH BUNGARNER,	SECRETARY
SARAH HACKFORD,	MEMBER
ORAN F. CURRY,	MEMBER
DUDLEY W. BURSON,	MEMBER

JOHN S. BOYDEN
LEGAL COUNSEL

Dated 11-12-1965

**CONSTITUTION AND BYLAWS
OF THE
AFFILIATED UTE CITIZENS OF THE STATE OF UTAH**

PREAMBLE

We, the mixed-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, invoking the divine guidance of Almighty God, seeking to more effectively comply with the legal requirements of the United States Government and all political subdivisions to which we are, and are to become, subject, to more ably assume the new obligations in justice now to be required of us, to protect the privileges and rights we do equitably claim, to preserve the cultural values we may possess, to encourage desirable and amicable relations with other citizens of our respective communities and to promote the general welfare of all, do ordain and establish this Constitution and Bylaws for the Affiliated Ute Citizens of the State of Utah.

ARTICLE I--MEMBERSHIP

The membership of the Affiliated Ute Citizens of the State of Utah shall consist of all persons whose names appear on the final mixed-blood membership roll as published in the Federal Register pursuant to Public Law 671, 83d Congress, 2d session (68 Stat. 868).



ARTICLE II--BOARD OF DIRECTORS

Section 1. The management of the affairs and funds of the Affiliated Ute Citizens of the State of Utah shall be vested in a Board of five Directors.

Sec. 2. The members of the Board of Directors shall be elected for a term of two years except at the first election when three members shall be elected for a term of one year and two members for a term of two years. The members of the Board of Directors shall be elected in a manner as provided in this Constitution and Bylaws.

Sec. 3. The Board of Directors shall elect by ballot one of their number President and one Vice-President. The offices of Secretary and Treasurer may, in the discretion of said Board, be combined and said Secretary and Treasurer may, but need not necessarily, be members of the Board or members of this organization.

Sec. 4. Three Directors present in person at any meeting of the Board shall constitute a quorum. Business may be transacted by a majority vote of the Directors present at such meeting. In the case of a tie vote upon any matter, the same shall fail to pass for want of a majority vote. The presiding officer shall be entitled to vote.

Sec. 5. Any action of a majority of the Board of Directors, although not at a regularly called meeting, and the record thereof, if assented to in writing by all of the other members of the Board, shall always be as valid and effective in all respects as if passed by the Board at a regular meeting.

ARTICLE III--NOMINATIONS AND ELECTIONS

Section 1. Any member of the Affiliated Ute Citizens of the State of Utah twenty-one years of age or over shall be entitled to vote and to hold office.

Sec. 2. All elections shall be by secret ballot, and all nominations and elections shall be held in accordance with the Bylaws.

Sec. 3. The first general election shall be called by the Superintendent of the Uintah and Ouray Agency on the third Saturday following ratification of the Constitution and Bylaws and the posting of the results of the election therefor at the Uintah and Ouray Agency. Thereafter, elections shall be held in accordance with rules adopted by the Board of Directors as provided in Article IV of the Bylaws.

ARTICLE IV--VACANCIES AND REMOVAL FROM OFFICE

Section 1. If a member of the Board of Directors shall die, resign, be removed or recalled from office, as hereinafter provided, or be found guilty in any State or Federal court of a felony

or misdemeanor involving dishonesty, the position shall be declared vacant and the Board of Directors shall fill the vacancy until the next general election.

Sec. 2. The Board may, by four affirmative votes, expel any member of said Board for neglect of duty or gross misconduct. Before any vote for expulsion is taken on the matter, the member shall be given a written statement of the charges against him at least five days before the meeting of the Board before which he is to appear and an opportunity to answer any and all charges at such designated Board meeting. The decision of the Board shall be final.

Sec. 3. Upon receipt of a petition signed by one-third of the eligible voters of the organization calling for the recall of any member of the Board, it shall be the duty of the Board to call an election on such recall petition. No member may be recalled in any such election unless at least fifty percent (50%) of the legal voters of the organization shall vote at such election and such election shall carry by at least a two-thirds majority of those voting.

ARTICLE V--POWERS OF THE BOARD OF DIRECTORS

Section 1. The Board of Directors shall exercise the following powers, subject to any limitations imposed by the statutes or the Constitution of the United States or the State of Utah, and

subject further to all express restrictions upon such powers contained in this Constitution and Bylaws adopted pursuant thereto, and subject to review by the membership of said organization at any annual or special membership meeting:

(a) To perform all the duties and functions of the mixed-blood members as the authorized representatives thereof pursuant to and in accordance with Public Law 671, 83d Congress, 2d session (68 Stat. 868), and all amendments thereto.

(b) To irrevocably delegate to corporations, or the officers thereof, organized pursuant to and in accordance with Public Law 671, 83d Congress, 2d session (68 Stat. 868), to receive, manage, distribute or otherwise handle assets of the mixed-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation, such powers and authority as may be necessary or desirable in the accomplishment of the objects and purposes for which said corporations may be so organized.

(c) To employ legal counsel, the choice and fixing of fees to be subject to the approval of the Secretary of the Interior until Federal supervision over all of the members of said group and their property is terminated in the manner provided in said act.

(d) To appropriate for salaries of employees or for other purposes of the organization any available, unobligated funds: Provided, That all appropriations are within a budget previously adopted by the general membership: Provided further, That all appropriations made prior to the termination of Federal supervision over the members of said organization and their property shall be subject to such approval by the Secretary of the Interior as may be required by law. Any appropriation not included within a previously adopted budget must be first approved at a meeting of the membership.

(e) To take such action as may be deemed advisable to foster and encourage participation of the members of the organization in the civic affairs of the cities, towns, counties, State, and the United States.

(f) To negotiate with all governmental bodies, agencies, civic and religious groups as representatives of the members hereof for the purpose of promoting the general welfare of said members.

(g) To provide for a referendum of the members of this organization whenever required under said Public Law 671 or upon any other matter deemed by said Board to be necessary or desirable

to the welfare or best interests of the members of this organization.

(h) To employ an Executive Director, if such is deemed advisable by said Board, provided, no member of the Board of Directors may be selected as such Executive Director.

ARTICLE VI--AMENDMENTS

Until such time as Federal supervision over all the members of said organization and their property is terminated, this Constitution may be amended in the same manner as provided for the adoption of this Constitution in said Public Law 671. After such a termination of Federal supervision, any amendment must be submitted by the Board of Directors to members of the organization and must be approved by a two-thirds majority of those voting at any election for that purpose under such rules as may be prescribed by the Board of Directors.

BYLAWS OF THE AFFILIATED UTE CITIZENS OF THE STATE OF UTAH

ARTICLE I--DUTIES OF OFFICERS

Section 1. President: The President shall preside over all meetings of the Board, shall perform all duties of a chairman and exercise any authority delegated to him by the Board. He shall have the privilege of voting.

Sec. 2. Vice-President: The Vice-President shall assist the President when called upon so to do and in the absence of the President he shall preside. When so presiding, he shall have all of the rights, privileges, duties, and responsibilities of the President.

Sec. 3. Secretary: The Secretary shall conduct all correspondence for this organization and shall keep an accurate record of all matters transacted in Directors' meetings. It shall be his duty to submit promptly to each member of the Board copies of all minutes of regular and special meetings of the Board of Directors.

Sec. 4. Treasurer: The Treasurer shall accept, receive, receipt for, preserve, and safeguard all funds in the custody of the Board of Directors. He shall deposit all such funds in such bank or elsewhere as directed by the Board of Directors and shall make and preserve a faithful record of such funds and shall report on all receipts and expenditures and the amount and nature of all funds in his possession or custody. Such report shall be made in writing to the Board of Directors at such times as requested by the Board of Directors. He shall not pay out or otherwise disburse any funds in his possession or custody or in the possession or custody of the Board of Directors except when properly authorized to do so by

resolution duly passed by the Board of Directors; and all expenditures must be made from proper appropriations made pursuant to the provisions of the Constitution of this organization. The books and records of the Treasurer shall be audited by a competent auditor employed by the Board of Directors at such times as the Board of Directors may direct, but not less than once each year. The Treasurer shall be required to give a bond satisfactory to the Board of Directors. The Treasurer shall be present at all regular and special meetings of the Board of Directors.

Sec. 5. Appointive Officers: The duties of all appointive committees or officers, including the Executive Director, of the Affiliated Ute Citizens of the State of Utah shall be clearly defined by resolution of the Board of Directors at the time of their creation or appointment. Such committees and officers shall report from time to time as required by the Board of Directors and their activities and decisions shall be subject to review by the Board of Directors.

ARTICLE II--SALARIES

The Board of Directors may prescribe such salaries of officers or of the Board members as it deems advisable from such funds as may be available and included within a budget approved at any regular or special membership meeting.

ARTICLE III--MEETINGS

Section 1. General Membership Meetings: There shall, on the last Monday in May, be an annual meeting open to all members of the Affiliated Ute Citizens of the State of Utah held at a designated place approved by the Board of Directors. Notice of such meeting shall be given in such manner as the Board of Directors may deem advisable.

Sec. 2. Special Membership Meetings: Special membership meetings may be called by the President or the Board of Directors, provided that due notice is mailed to the last known address of all members of this organization thirty days prior to such meeting. Fifteen legal voters of this organization may at any time by written petition call a special membership meeting provided that at least thirty days notice is mailed to the last known address to all members of this organization.

Sec. 3. Meetings of the Board of Directors: Meetings of the Board of Directors shall be held at such times and such places as the Board itself may determine. The President may also call a meeting of the Board of Directors, and in either event written notice must be duly served on each member of the Board a reasonable time before said meeting. Any action of the majority of the Board

of Directors although not at a regularly called meeting, and the record thereof, if assented to in writing by all the other members of the Board, shall always be as valid and effective in all respects as if passed by the Board at a regular meeting. Whenever any notice whatever is required to be given under the provisions of these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

Sec. 4. Quorum. A quorum of a general membership meeting shall consist of not less than thirty voters at the annual meeting and twenty-five voters at a special meeting. A quorum of the Board of Directors shall consist of three members of the Board of Directors.

ARTICLE IV--NOMINATIONS AND ELECTIONS

Nominations shall be made and elections held by a secret ballot in accordance with rules to be adopted by the Board of Directors, but provision shall be made for nominations at least thirty days prior to elections. Provision shall also be made for absentee ballots.

ARTICLE V--AMENDMENTS

These Bylaws may be amended by an affirmative vote of four or more members of the Board of Directors.

I, Glenn L. Emmens, Commissioner of Indian Affairs, by virtue of the authority granted to me in section 6 of the act of August 27, 1954 (68 Stat. 869), do hereby approve the attached Constitution and Bylaws for the Affiliated Ute Citizens of the State of Utah.

APR -5 1956

(1955) GLENN L. EMMENS

Commissioner of Indian Affairs

Washington, D. C.

CERTIFICATION OF ADOPTION

Pursuant to an order, approved April 5, 1956

by the Commissioner of Indian Affairs, the attached Constitution and Bylaws was submitted for ratification to the Affiliated Ute Citizens of the State of Utah of the Uintah and Ouray Reservation and was on May 12, 1956 duly adopted by a vote of 128 for, and 6 against, constituting a majority of the adult members, in an election held on May 12, 1956, in accordance with section 6 of Public Law 671 dated August 27, 1954 (68 Stat. 870).

(Sgd.) John O. Crow
Chairman, Election Board

(Sgd.) Alfonso Ben VAN
Judge

(SGd.) Daniel Crumbo
Clerk

(Sgd.) Clarence P. Harris, Sr.
Clerk

(Sgd.) Jasper Pike
Marshal

12

~~THUR~~
WLS
BUREAU OF INDIAN AFFAIRS
RECEIVED
MAY 16 1956
JUN 1 1956
Uintah and Ouray Agency
Fort Duchesne, Utah

May 14, 1956

Commissioner

Bureau of Indian Affairs, Washington, D. C.

Through: Area Director, Phoenix

Dear Sir:

Pursuant to your letter of April 5, 1956, an election was held on May 12 among the Affiliated Ute Citizens of Utah on the adoption of a constitution and bylaws as authorized by Section 6 of the Act of August 27, 1954.

A total of 184 eligible voters, constituting a majority thereof, participated in the election, resulting in 128 affirmative votes and 6 negative votes. A copy of the constitution and bylaws with a signed copy of the certification of qualification is enclosed as requested. The original of these documents will be delivered to the Board of Directors when they have been elected and qualified. An election for the purpose will be held on June 2, 1956, and you will be apprised of the results thereof.

Sincerely yours

Encl

John O. Crow, Superintendent

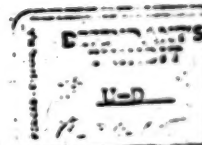
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Noted by:

(Signed) James B. Ring

THURSDAY, MAY 18, 1956 - PHOENIX

1956



SUPREME COURT, U. S.

Supreme Court, U.S.
FILED

FEB 9 1971

E. ROBERT SEAVER, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1970

No.

~~1331~~

70-78

AFFILIATED UTE CITIZENS OF THE STATE OF UTAH,
an unincorporated association formed by and under the
supervision of the Secretary of the Department of the In-
terior pursuant to Public Law 83-671 (25 U.S.C. §§ 677-
677aa) composed of 490 so-called "mixed-blood" members
of the Ute Indian Tribe of the Uintah and Ouray Reserv-
ation, Utah, suing on its own behalf and as representative
for and on behalf of its 490 members and their heirs and
legal representatives as a class; and the 490 so-called
"mixed-blood" members of the Ute Indian Tribe of the
Uintah and Ouray Reservation, Utah, individually and as
an identifiable Indian group or band,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondents.

ANITA REYOS, *et al.*,

Petitioners,

vs.

FIRST SECURITY BANK OF UTAH, N.A., UNITED STATES
OF AMERICA, JOHN B. GALE AND VERL HASLEM,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEALS FOR THE TENTH CIRCUIT

PARKER M. NIELSON

320 Kearns Building

Salt Lake City, Utah 84101

Attorney for Petitioners

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1970

No.

AFFILIATED UTE CITIZENS OF THE STATE OF UTAH,
an unincorporated association formed by and under the
supervision of the Secretary of the Department of the In-
terior pursuant to Public Law 83-671 (25 U.S.C. §§ 677-
677aa) composed of 490 so-called "mixed-blood" members
of the Ute Indian Tribe of the Uintah and Ouray Reserv-
ation, Utah, suing on its own behalf and as representative
for and on behalf of its 490 members and their heirs and
legal representatives as a class; and the 490 so-called
"mixed-blood" members of the Ute Indian Tribe of the
Uintah and Ouray Reservation, Utah, individually and as
an identifiable Indian group or band,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondents.

ANITA REYOS, et al.,

Petitioners,

vs.

**FIRST SECURITY BANK OF UTAH, N.A., UNITED STATES
OF AMERICA, JOHN B. GALE AND VERL HASLEM,**

Respondents.

**PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEALS FOR THE TENTH CIRCUIT**

Petitioner Affiliated Ute Citizens of the State of Utah, ("AUC" herein) Plaintiff-Appellant in the courts below, and petitioners Anita Reyos, et al., ("Reyos" herein) Plaintiffs-Appellees in the courts below, pray that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Tenth Circuit in these consolidated cases.

OPINIONS BELOW

The orders of the United States District Court for the District of Utah, dismissing the complaint in AUC and entering judgment for the plaintiffs in *Reyos*, are unreported. See App.¹ A, 1 to 98. The opinions of the Court of Appeals for the Tenth Circuit were simultaneously issued and are reported at 431 F. 2d 1337 and 1349, respectively, (10th Cir. June 19, 1970). See App. B, 99 to 121 and App. C, 122 to 125.

JURISDICTION

The decisions of the Court of Appeals were filed on June 19, 1970. Motions for rehearing in each case were duly filed and denied on November 12, 1970. The jurisdiction of this Court is invoked under the provisions of Title 28 U.S.C. Section 1254(1). The time for filing this petition expires February 10, 1971.

QUESTIONS PRESENTED

Under an Indian termination act, declaring a phased withdrawal of Government services rendered to Indians and an end to supervision of their restricted property:

1. Are the Indians deprived, by implication, of any interest in their property, or do they lose their cultural identity as American Indians so that benefits of law other than under Federal statutes are eliminated by implication?

¹ "App." refers to the separately bound Appendix to this Petition.

2. May the BIA administratively eliminate protections to the Indian contained in an act of Congress or modify the termination procedures prescribed therein?

3. Does publication of a "termination proclamation" eliminate the Government's duty to Indians with respect to their property which is still under trusteeship or as to which the Government retains limited supervisory control?

4. Does a non-Indian purchasing or aiding in the purchase of stock in an Indian corporation have a duty to comply with the anti-fraud provisions of the Federal securities laws, in addition to the provisions of Indian law?

STATUTES AND REGULATIONS INVOLVED

The Ute Termination Act ("Act" herein) is published at 25 U.S.C. §§ 677-677aa, and is reproduced in its entirety at App. D, 126-143. The pertinent regulations under the Act are reproduced at App. E, 144-146.

The relevant provisions of the Securities Exchange Act of 1934 are reproduced at App. F, 147-148 and include Section 10(b) (15 U.S.C. § 78j(b)) and the "anti-fraud" provisions of Rule 10b-5 adopted thereunder (17 C.F.R. 240.10b-5).

STATEMENT OF THE CASE

The elements of this case are unusually complex, because of the interrelationship of two different sets of federal laws and regulations with a complicated termination program, and with a subtle fraud and conspiracy practiced on the Indians by whites, according to the findings of the trial judge. Statement of such a case is possible only by generalizing on the facts and an accurate presentation must await briefing on the merits. Nevertheless, we submit that the ultimate issues necessary to understand the case are as follows.

Petitioner AUC is an unincorporated association of all terminated Ute Indians formed by the Secretary of Interior pursuant to § 677e^{1a} of the Act. The *Reynos* petitioners are individual terminated Utes who are members of AUC.

The Act provided that the Utes who were subject to its provisions, comprising 27.16186 per cent of the Ute Indian Tribe ("Tribe" herein) would be terminated from Federal supervision and be given their rights in severalty to all tribal property. The mineral estate in the reservation, which was difficult to divide, was to be held in common among the terminated Utes and those Utes who were not terminated. Supervision by the Bureau of Indian Affairs ("BIA" herein) of the Indian and his property was removed upon publication of a termination proclamation on August 26, 1961, except as to the mineral estate² which remained subject to certain restrictions on sale until August 27, 1964, and was subject to joint management under the Act by the "authorized representative" of the terminated Utes and the Tribe as representative of the Utes who were not terminated. The joint management restriction remains in effect to the present time, and title to the mineral estate remains in trust with the United States for the Indians beneficially entitled to it.

The "authorized representative" of the terminated Utes was to be selected by "an appropriate constitution and bylaws which shall become effective when ratified by a majority vote of the adult mixed-blood³ members of the tribe at a special

^{1a} For convenience, references to the Act are merely by section number, as they appear in App. D.

² Real property was also subject to a "right of first refusal" which continued until August 27, 1964, but real property other than the mineral estate is not at issue herein.

³ "Mixed-blood" is the term selected by Congress to designate the Indians who were subject to the Act. They are referred to herein as "terminated Utes."

election authorized and called by the Secretary."⁴ The Secretary caused petitioner AUC to be formed in the manner stipulated by that provision and it was the undisputed "authorized representative" for a period of several years. Later, at a time contemporaneous with the publication of the termination proclamation, the BIA caused the Ute Distribution Corporation to be formed ("UDC" herein). UDC was not formed pursuant to a "constitution and bylaws" or at an election held in accordance with the Act. Nevertheless, the BIA thereafter permitted UDC to act in the capacity of "authorized representative" and paid all proceeds from the leasing of the mineral estate to UDC to be paid to its stockholders in the form of dividends. The stockholders quickly became non-Indians because of fraudulent stock purchases, all of which took place after August 26, 1961, and most prior to August 27, 1964. These sales are the subject of *Reynos*.

The substitution of a corporate charter for the constitution and bylaws prescribed by the Act injected a new element into Congress' termination program; for the corporate stock was subject to sale, but membership in the unincorporated association, like a person's citizenship, clearly was not. BIA undertook to supervise all sales of the stock prior to August 27, 1964, by adopting regulations incorporating substantially the same conditions on such a sale as were imposed by the Act on the sale of real property, and establishing respondent First Security Bank ("bank" herein) as transfer agent and to assist UDC as "business agent."⁵ The bank found the regulations thus adopted to be inconvenient, however, and proposed an alternate procedure which was easier for it to administer.⁶ The Superintendent of the Indian agency was informed of the changed procedure adopted by the bank, and he acquiesced in the changes, although they were never made a part of the regulations.

⁴ 25 U.S.C. §677e, reproduced at App. D, 128.

⁵ See App. A, 8-9 for pertinent terms of the agreement.

⁶ See App. A, 56, 68-69.

The terminated Utes, whom the trial judge found were naive and uninformed as to the nature of their stock,⁷ sold it to non-Indians. The officers of the bank located non-Indian purchasers and Indian sellers of the stock and performed other tasks similar to those of a regular stock broker in the securities market.⁸ The Indians were induced to sell in an assortment of ways which usually involved economic pressures,⁹ sometimes contrived and sometimes already existent, and other deceptive practices which the trial judge found amounted to fraud. Agents were sometimes used by the bank officers in arranging for the purchases and applying the economic pressures. The Indian was usually given a used automobile or other chattel at inflated prices, even though the regulations required that the sale be for cash, and the Indian was usually required to sign an affidavit falsely reciting that the required amount of cash had been paid. Material facts concerning the transaction and information calculated to protect the Indian were withheld from him or misrepresented.

The *Reynos* plaintiffs claim that the sales of UDC stock were fraudulent within the meaning of the securities laws, and that the United States was negligent in failing to prevent the fraud by requiring compliance with the Act and regulations.¹⁰ AUC seeks to confirm the title of its members in the mineral estate and its own right to act as "authorized representative."

The trial judge entered judgment for the *Reynos* plaintiffs but dismissed the AUC complaint, ruling that jurisdiction was

⁷ See App. A, 83. The stock contained red letter warnings calculated to alert the Indian to the probable value of the stock, but the Indian never saw the warnings because the bank kept the certificates in its vaults and refused the Indian access to them, even if he requested it. See App. A, 6-7, where the warning is quoted and App. A, 51, 56-57, 72-74.

⁸ See App. A, 77-78.

⁹ See App. A, 16.

¹⁰ See App. A, 59-61 for findings that the government knew of the irregularities.

lacking. The Court of Appeals reversed in *Reynos*, and affirmed as to AUC.

REASONS FOR GRANTING THE WRIT

The decisions of the Court of Appeals present important questions of National policy touching the lives of the entire Indian population of this country. Many thousands of Indians have already been terminated, and the remaining Indians will undoubtedly be subjected to termination laws or other programs designed to eliminate or modify their status as protected wards.

The decisions herein alter the entire fabric of Indian law, rejecting the customary requirement of straight dealing by one who purchases Indian property¹¹ and declaring the terminated Indian "fair game" for unscrupulous white merchants. This Court has never had occasion to rule on the question of whether such an abrupt change of policy is required by the termination acts or is either desirable or proper, and should do so now to supply a guide to the courts in disposing of similar questions which are bound to arise in the future.

I

THE CASE PRESENTS IMPORTANT PUBLIC QUESTIONS CONCERNING THE POWER OF BIA TO ALTER A TERMINATION PROGRAM PRESCRIBED BY CONGRESS

The sales of the terminated Utes interest in the reservation could not have occurred if the BIA had not altered, or per-

¹¹ E.g. *Bacher v. Patencio*, 232 F. Supp. 939, 941 (S.D. Cal. 1964) affirmed, per curiam 368 F. 2d 1010 (9th Cir. 1966): "as Justice Holmes once said, people must turn square corners when they deal with their government. They must do the same when dealing with their government's wards."

mitted the alteration, of the termination procedure prescribed by Congress. If AUC is correct in its claim, that a corporation such as UDC cannot act as "authorized representative," the sales could not have occurred because the mineral assets could never have been entrusted to the corporation. But even accepting, *arguendo*, that the use of the corporation was proper, the stock sales still could not have occurred if the altered procedures adopted by the bank had not been acquiesced in by the Superintendent. That is so whether one accepts the conclusion of the trial judge that the sales were the result of fraud, or the conclusion of the Court of Appeals that they were the result of contributory negligence or *pari delicto*,¹² for not a single transfer was accomplished in the manner contemplated by the Secretary's regulations.¹³

UDC was substituted for AUC as the "authorized representative" of the terminated Utes, although the Act clearly prescribed a "constitution and bylaws" rather than a corporate charter. A procedure for the sale of the corporate stock which suited the convenience of the bank was substituted for the one prescribed in the Act and regulations.

BIA may have felt that the procedures substituted were more desirable, but the law prior to this case has been as indicated in *Ballinger v. Frost*, 216 U.S. 240, 249 (1910):

¹² The Court of Appeals apparently adopted the theory of *in pari delicto*:

"The plaintiffs here thus complain that these affidavits which they executed were not accurate, and that the bank and its officials were aware that they were not correct.

"It is difficult to see how they can complain of inaccuracies in their own affidavits." App. B, 112-114.

The Indians plainly did not complain of inaccuracies in their affidavits; they complained of the deviation from the procedure prescribed by Congress, which was the source of their injury. See App. A, 84. Thus, the true issue was not even considered.

¹³ See App. A, 73-74, 82, for the trial judge's findings in this regard.

"Whenever, in pursuance of the legislation of Congress, rights [of an Indian] have become vested it becomes the duty of the courts to see that those rights are not disturbed by any action of an executive officer, even the Secretary of Interior, the head of a department. However laudable may be the motives of the Secretary, he, as all others, is bound by the provisions of Congressional legislation."

AUC claims that the terminated Utes acquired vested rights in all assets, including the mineral estate, by virtue of §677o of the Act.¹⁴ The Court of Appeals acknowledged that AUC and its members "has an undivided 27 per cent beneficial interest in the oil, gas and minerals"¹⁵ but any comfort to the terminated Utes in that recognition was rendered illusory by the holding that the federal courts are without jurisdiction to confirm the interest of AUC or to prevent the delivery of these assets to the corporation which had fallen into non-Indian hands. AUC claimed that jurisdiction was available under 25 U.S.C. §345,¹⁶ but the Court of Appeals took a restrictive view which prevents application of the section's jurisdictional provisions to any Congressional grants other than conventional allotments. In fact, the Court of Appeals avoided the central issue of the AUC case by asserting that "[i]t is not an issue in this case as to what organization . . . has the right

¹⁴ See discussion at page 20, *infra*.

¹⁵ App. C, 125.

¹⁶ In pertinent part, the section reads:

"All persons who are in whole or in part of Indian blood or descent . . . who claim to have been unlawfully denied or excluded from . . . any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States. . . ."

The Court of Appeals' restrictive view of the section conflicts with the liberal interpretation in *United States v. Pierce*, 235 F. 2d 885, 888 (9th Cir. 1956). See also, *Hy-Yu-Tse-Mil-Kin v. Smith*, 194 U.S. 401 (1904); *Halbert v. United States*, 283 U.S. 753 (1930); *Arenas v. United States*, 322 U.S. 419 (1944).

of management." That was, indeed, the gravaman of the complaint.¹⁷

This Court should grant certiorari to reaffirm the time-honored concept that an administrative official cannot alter the procedures prescribed by Congress for the protection of Indians, and apply it to the recent wave of termination laws. The rule in the *Ballinger* case should be affirmed in the context of the termination laws for, as the Court of Appeals for the Ninth Circuit has said:

"In his dealings with the Indians, the Secretary of Interior does not have the power of an asiatic potentate or even of a benevolent despot. He, like his wards themselves, is subject to legislative restrictions." *United States v. Arenas*, 158 F. 2d 730, 747-8 (9th Cir. 1947) *cert. den.* 331 U.S. 842.

II

THE WRIT SHOULD BE GRANTED TO SECURE PROTECTIONS TO THE INDIVIDUAL INDIAN CONTAINED IN THE ACT

A fundamental issue, of great significance to all American Indians, is whether the protections prescribed by a termination act for "members of the tribe" extend to individual Indians.

¹⁷ The complaint alleged:

"Plaintiff is now and at all times since its creation, has been, the 'authorized representatives' of the 'mixed-bloods,' within the language, meaning and intent of Public Law 83-671 and whenever in said Law 'authorized representatives' is mentioned, said language refers to, and only to, the plaintiff herein. Plaintiff is now and at all times since its creation has been the exclusive representative of the 490 'mixed-blood' Ute Indians who constitute its only members. This action is brought by plaintiff for and on behalf of its 490 'mixed-blood' Ute Indian members."

The trial judge in *Reynos* carefully considered the records of meetings with the Indians preliminary to adoption of the Act, legislative history, the construction of the term "members of the tribe" by the Solicitor of the Department of Interior and the practices of BIA in implementing the Act. Based upon the extensive evidence available to him, the trial judge concluded that the protections of the Act for "members of the tribe" were available to the individual terminated Utes. Liability of the United States was based upon its negligence in securing those protections.

The Court of Appeals rejected the trial court's findings of Government negligence¹⁸ by holding that "[t]he right of refusal thus created no duty on the part of the government to the then terminated mixed-blood plaintiffs who were seeking to sell their shares of stock."¹⁹ Thus, this petition presents the important question of whether the procedures contained in legislation terminating the status of a protected Indian have any effect to protect the Indian himself in his property rights.

This Court suggested otherwise in *Menominee Tribe v. United States*, 391 U.S. 404 (1968), where the issue was whether a termination act protected the Indian's *treaty* rights:

¹⁸ In summary, as regards the government, the trial judge ruled that the Termination Act required a phased withdrawal of the government's supervision of the Indians over a ten-year period; that the restrictions on the sale of assets during the ten-year period were a limited protection to the Indians; that the government had a duty towards the Indians to exercise due care respecting the limited protective provisions; that, to the extent that it initiated programs during the ten-year period continuing beyond the period, its duty might also extend beyond the ten-year period; that there was a limited duty with respect to property remaining in the Government's control; that, without regard for the duty imposed by the Termination Act, the Government's conduct gave rise to duties under the "assumed duty" concept; and that the government negligently discharged its statutory and assumed duties by simply refusing to protect the Indians against fraudulent circumvention of the provisions of the Act which were well known to BIA officials.

¹⁹ App. B, 108.

"We decline to construe the Termination Act as a bank handed way of abrogating the hunting and fishing rights of these Indians. While the power to abrogate those rights exists the intention to abrogate or modify a treaty is not to be lightly imputed to the Congress." (citations omitted) 391 U.S. 412-13.

The same principle should be extended to the statutory rights under this Act, which the Court of Appeals failed to secure to the Indians.

In the view of the Court of Appeals, the "right of refusal" which Congress directed be available to the "members of the tribe" was but a backhanded way of expropriating the terminated Utes' share of the mineral estate to the Utes who were not terminated and who were represented by the Tribe. The Court of Appeals refused to consider the evidence²⁰ on the proper construction of the term and relied, instead, upon the following holding of *Ute Indian Tribe v. Probst*, 428 F. 2d 491, 496 (10th Cir. 1970) cert. denied 27 L. Ed. 186:

"The first-refusal provision gave the Tribe, for a ten year period, the opportunity to recover land which it had lost by division of assets between the two groups."

Rejection of the evidence by the Court of Appeals in favor of its own recently announced opinion would have been logical and understandable, had the Court of Appeals not refused AUC's earlier request to intervene *amicus curiae* in *Probst* to advise the Court of the legislative history which was not available to it in the *Probst* record. Nevertheless, both the Act and

²⁰ These matters, which were not really issues until the Court of Appeals rejected the trial judge's findings, were emphasized in the Petitions for Rehearing, which were denied, and the Petition for Rehearing *en Banc* in *Reynos*, which was submitted for filing within the time permitted by the rules but disposed of with the court's comment: "received but not filed."

the regulations show on their face that the Court of Appeals' conclusion is wrong.²¹

The rationale of the Court of Appeals in *Probst* was rejected by Justice Cardozo many years ago, in *Shoshone Tribe v. United States*, 299 U.S. 476, 492-4 (1937):

"The claimant takes the ground that the jurisdictional act is an exercise of the power of eminent domain . . . The sovereign power is not exercised to extinguish titles or other interests against the will of tribal occupants by force of eminent domain.

" . . . Congress had no thought . . . to prescribe present expropriation in lieu of present reparation."

The Court of Appeals decision strikes at the basic policy of Indian law against an inference of elimination of protections available to Indians. The Court of Appeals concluded that when Congress imposed restrictions on the sale of Indian property in the form of a "right of refusal" exercisable by the "members of the tribe" (emphasis added), it really meant to extend the first refusal provision to the "Tribe" (emphasis added), and not its individual members. It was no matter, to the Court of Appeals, that the individual Indians were assured prior to the Act that these protections would extend to them as individuals, for the Court of Appeals simply ignored the findings of fact of the trial judge and the evidence on this point,²² without any comment on the large volume of evidence sup-

²¹ The "right of refusal" could not be for the purpose indicated in *Probst*, for Congress contemplated that the Tribe would shortly be done away with in a subsequent termination of the full-blood group. See §§ 677 and 677w, App. D, 126 and 142, respectively. The regulations, contrary to the conclusion of the Court of Appeals, included the terminated Utes in the "members of the tribe" by definition. See 25 C.F.R. §243.2(c), App. E, 144: "Member of the Tribe" means all mixed-blood and full-blood members . . ."

²² See App. A, 64.

porting the trial judge's findings.²³

The proclivity of Indians to improvident dissipation of their assets is well known, presumably to Congress, as well as the public. Congress plainly declared that the Secretary should "protect the rights of the tribe who are . . . non compos mentis, or in need of assistance in conducting their affairs,"²⁴ but the Superintendent read the term "in need of assistance" out of the Act entirely and did nothing pursuant to the mandate except as to those he determined to be "incompetent." The Court of Appeals ruled that he had no duty so to do. The requirement of an "offer to members of the tribe in such form as may be approved by the Secretary" for a ten-year period²⁵ did not impose upon the Secretary a duty to reject sales not in the required form, as a protection to the Indian, according to the Court of Appeals.

In response, we echo this court's comment in *Arenas v. United States*, 322 U.S. 419, 427 (1944): If the Indians were not to be afforded protections under the Act, and those protections were to be available only to the Tribe, why send government agents to the reservation to hold out that promise? Why the elaborate system of notice, to the individual members, of each proposed sale and of the first refusal option? Why the specific provisions concerning terminated Utes "in need of assistance" if Congress had no intention to protect them?

Can the rights of the individual Indian be cast aside so summarily? Congress plainly required an offer to "members

²³ In doing so, the Court of Appeals rejected the firmly established principle that findings of the trial judge, including rulings of law, are entitled to great weight because of his peculiar opportunity to hear the evidence. E.g. *United States v. Oregon State Medical Society*, 343 U.S. 326 (1951).

²⁴ § 667u, App. D, 141-142.

²⁵ § 677n, App. D, 138.

of the tribe" and not the "Tribe." Moreover, Congress defined "member of the tribe" so as to include the terminated Ute plaintiffs in this case. Yet, the Court of Appeals denied these plaintiffs any rights under the procedures Congress prescribed.

III

THE COURTS SHOULD BE SUPPLIED WITH GUIDANCE CONCERNING THE EFFECT OF TERMINATION LAWS IN ELIMINATING PROTECTIONS TO INDIAN PROPERTY

The assumption of the Court of Appeals that, upon publication of the termination proclamation, the Indians subject to the Act were no longer entitled to the protection of their property under provisions of the Act itself or under the body of judicial precedent concerning commercial transactions with Indians is a question of National importance which merits the attention of this Court. No language of the Act requires such a result, and it is a firmly established doctrine that elimination of the protective provisions of Indian law may not be lightly inferred.²⁶

The Court of Appeals pointed to the provisions of the Act declaring that upon publication of the termination proclamation "all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable" and that "the laws of the several states shall apply to such member in the same manner as they apply to other citizens," and concluded that the Indians were stripped of their Indian status for all purposes when the termination proclamation was published. Further, the Court of Appeals read that language

²⁶ See *Menominee Tribe v. United States*, 388 F. 2d 998, 1003 (Ct. Cl. 1967) Aff'd 391 U.S. 404, and cases collected there. See also *Chippewa Indians v. United States*, 307 U.S. 1 (1939); *Board of Commissioners v. Seber*, 318 U.S. 705 (1943); *United States v. Waller*, 243 U.S. 452, 459-460 (1916); *United States v. Bowling*, 256 U.S. 484 (1921); *Shoshone Indian Tribe v. Seaton*, 248 F. 2d 154 (D.C. Cir. 1957).

as meaning that the United States owed no further duty to protect that portion of the Indian's property which was still under its trusteeship.

The Court of Appeals extended the words of the statute beyond their natural meaning, however, and ignored other provisions of the Act. It is one thing to say that in matters such as probate law, Federal statutes dealing with Indians will no longer apply and that state statutes will be applied in their place, but quite another thing to say that the entire body of case law, based upon decisions of this Court dealing with presumptions of the law concerning those whose business acumen is known to be limited, was repealed. It is one thing to say that the United States will have no further duty to supervise property distributed to the Indian, but quite another to say that the United States may deliver the proceeds of the mineral estate to non-Indians with impunity, when it knows that the non-Indian's claimed interest was acquired in violation of the Act and the regulations.

A. *Conflicts With the Court of Appeals for the Ninth Circuit and The Court of Claims*

The Court of Appeals has construed the Act inconsistent with the construction of companion legislation by the Court of Appeals for the Ninth Circuit in *Crain v. First National Bank*, 324 F. 2d 532 (9th Cir. 1963) ("*Crain*" herein) and the Court of Claims in *Menominee Tribe v. United States*, 388 F. 2d 998 (Ct. Cl. 1967), *affirmed*, 391 U.S. 404 ("*Menominee*" herein). Both cases involved construction of termination acts which were companion legislation to the Ute Act, containing substantially identical provisions defining "members of the tribe" and directing a phased withdrawal of federal supervision, all enacted by Congress during the same month. The inconsistency lies in the Court of Appeals' holdings (1) that the publication of the "termination proclamation" ended, for

all purposes, the terminated Ute's status as Indians and as "members of the tribe," (2) that the Termination Act did not create an intermediate, or limited, trust relationship which continued until August 27, 1964²⁷ and (3) that the United States does not have a limited duty with respect to property retained in its possession.

The *Menominee* case dealt with whether the terminated Indians were "members of the tribe" after publication of the termination proclamation. The Court of Claims held that they were, and this Court affirmed the holding.

"The government has challenged the jurisdiction of this Court, and contends that the Menominee Termination Act, supra, abolished the Menominee Tribe of Indians and that the plaintiffs are not entitled to maintain this suit in this court. We do not agree. [Many examples of continued tribal relationship are then given, all of which apply to the terminated Utes.] The Termination Act did not abolish the *tribe* or its membership. It merely terminated Federal supervision over and responsibility for the property and members of the tribe."
388 F. 2d 1000

The Court of Appeals held that the terminated Utes were no longer either "members of the tribe" or Indians. The effect was to deprive them of protective provisions of the Act itself, as already demonstrated; but perhaps more importantly, they were also deprived of the burdens and presumptions the law imposes on one who obtains Indian property by sharp dealings.²⁸

²⁷ See App. B, 108-110. The trial judge's conclusion that there was a limited relationship, giving rise to a limited duty on the part of the United States, was rejected. See App. A, 91-92.

²⁸ E.g., *Poafpybitty v. Skelly Oil Co.*, 390 U.S. 365, 369 (1968); *Heckman v. United States*, 224 U.S. 413, 446-447 (1911); *United States v. Trinidad Coal and Coking Co.*, 137 U.S. 160 (1890). See also *Bacher v. Patencio*, 232 F. Supp. 939, 941 (S.D. Cal. 1964) *affirmed, per*

The *Crain* case dealt with the closely related question of whether any vestige of the Government's supervisory control survived publication of the termination proclamation. The Klamath Indians who were the plaintiffs in *Crain* said that it did not, and that they had the right to dissolve a trust created by the Secretary. Their argument was premised on the exact assumption of the Court of Appeals in *Reynos*, that "once federal jurisdiction terminated on August 13, 1961, by Proclamation of the Secretary of the Interior, the guardian-ward relationship ended for all purposes and the appellants rights to handle their property must be determined as any other persons."²⁹ The Court of Appeals for the Ninth Circuit categorically rejected the argument:

"Our answer is direct and simple. Federal jurisdiction did not end on August 13, 1961 and the *guardianship relation has not terminated for all purposes*.

"Congress has the power to determine when, how and by what steps it will emancipate the Indian and whether the emancipation shall be complete or only partial." 324 F. 2d 532, 536 (emphasis added).

Thus, the square holding of the *Crain* case is that if the Secretary sets procedures in motion prior to publication of the termination proclamation, by which limited control is maintained over Indian property, as to that property "the guardianship relation has not terminated for all purposes." However, when the trial judge applied the narrow holding of *Crain* to the facts of the *Reynos* case, and held that as to the mineral estate which was still in the Government's hands and the notice

curiam, 368 F. 2d 1010 (9th Cir. 1966). (Judge Chambers concurring separately):

"wherever a sale of property has been made by an Indian during the trust period the courts have not hesitated to strike it down as void. Even if fair consideration has been given for the property the sale will not be allowed to stand; nor need the Indian first return the consideration."

²⁹ *Crain v. First National Bank*, 324 F.2d 532, 535-536 (9th Cir. 1963).

procedures which it instituted prior to publication of the proclamation there remained a vestige of power and correlative duty, he was reversed. Oddly enough, the holding of the Court of Appeals in *Reynos* is the very argument raised by the Klamaths in *Crain* and rejected by the Court of Appeals for the Ninth Circuit:

"The provisions are clear and the termination was accomplished and is final." App. B, 109.

The confusion is further magnified if the AUC opinion and *Ute Indian Tribe v. Probst*, 428 F. 2d 491 (10th Cir. 1970) cert. den. 27 L. Ed. 186 are set along side the conflict between *Menominee* and *Crain*, on the one hand, and *Reynos*, on the other. Though decided by the same court, AUC and *Probst* conflict with one another: AUC adopted the *Menominee-Crain* rationale, and declared that the terminated Utes were still "members of the tribe":

"The plaintiff . . . mixed-bloods . . . were formerly or may be now members of the Ute Indian Tribe." (emphasis added) App. C, 123.

However, *Probst* construed the term "members of the tribe" as meaning "Tribe," and "only secondarily, if at all, the protection of the selling mixed-blood," and *Reynos* merely adopted the *Probst* holding.

Reynos and AUC thus reach diametrically opposite conclusions on whether the terminated Utes are "members of the tribe," even though they were rendered by the same panel of the same court on the same day. In candor, we are dismayed that the Court of Appeals would take such an inconsistent approach on what is the pivotal issue in both cases.

The structure of the Act proves the construction in *Crain* and *Menominee* to be proper, and the construction in *Reynos*

and *Probst* to be in error. The Act must be read in its entirety, and in light of its purpose. The language of §677v which the Court of Appeals relied on is plainly qualified by an exception contained in §677o:

"[the Secretary] shall further remove all restrictions on the sale or encumbrance of trust or restricted property owned by such member of the tribe, and Federal supervision of such member and his property shall thereby be terminated, *except*³⁰ as to his remaining interest in tribal property in the form of [the mineral estate] all of which shall remain subject to the terms of sections 677-677aa of this title, notwithstanding anything contained in said sections to the contrary." (emphasis added)

The limited duty found by the trial judge was based on the exception of §677o. The Menominee and Klamath termination acts did not contain such an exception, but the Court of Claims and the Court of Appeals for the Ninth Circuit had no difficulty in finding a limited tribal relationship and a limited supervisory control, after publication of the proclamation, based upon the general purpose of the legislation. Surely the Court of Appeals in *Reynos* is in error to reject the correlative duty in face of the clear exception contained in §677o.

B. *Conflicts With Decisions of This Court*

This Court has construed a termination act but one time. See *Menominee Tribe v. United States*, 391 U.S. 404 (1967).

³⁰ The exception relates to the antecedent thought: viz., the Secretary shall remove the restrictions and supervision of property, except as to the mineral assets, which shall remain subject to the Act. The Government argued that the exception relates to the direction to convey the property. The issue was never decided, but even under the Government's construction there had to be a limited duty, for if there was any property which Congress did not direct be conveyed to the terminated Utes, there clearly would be a limited aspect of trusteeship remaining as to that property.

As regards the narrow holding of the *Reynos* case — that the provisions of the Act declaring that laws of the states will apply to terminated Indians in the same manner as they apply to other citizens means that after August 26, 1961, the United States had no vestige of a duty and the terminated Utes were stripped completely of their Indian status — this Court reached a diametrically opposite conclusion as regards the Menominee's treaty rights:

"The Termination Act provided that after the transfer by the Secretary of title to the property of the tribe, all federal supervision was to end and the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.

"It is therefore argued with force that the Termination Act of 1954, which became fully effective in 1961, submitted the hunting and fishing rights of the Indians to state regulation and control. We reach, however, the opposite conclusion." 391 U.S. 410.

The conclusion was based on a reading of Public Law 280,³¹ dealing with preservation of Indian hunting and fishing rights, as being *in pari materia* with the termination act. The same reasoning applies here, but with even greater force because of the exception contained in §677o of the Ute Act.

The degree to which the Court of Appeals decision in *Reynos* conflicts with this Court's *Menominee* decision is evident when it is observed that the Court of Appeals cited both the *Menominee* case and *Klamath and Modoc Tribes v. Mason*, 338 F. 2d 620 (9th Cir. 1964) for its conclusion that no vestige of a duty survived the publication of the termination proclamation. Yet the *Klamath-Modoc* case relied, in turn, upon the decision of the *Menominee* cases in the state courts where it was held that treaty rights were eliminated by the termination act,³² and it was those cases which this Court

³¹ 67 Stat. 588, as amended, 18 U.S.C. §1162.

³² *State v. Sanapaw*, 21 Wis. 2d 377, 124 N.W. 2d 41 (1963).

reversed.³³ Thus, the Court of Appeals has stood this Court's *Menominee* opinion on its head, and reads it as standing for the very proposition it was issued to correct.

The essential vice of the Court of Appeals conclusion is that by stripping the terminated Utes of their Indian status, rather than just their benefits under Federal statutes dealing with their status as Indians, the Court of Appeals has reversed the entire body of Indian law, containing a multitude of decisions by this Court to the effect that one who is charged with overreaching in his dealings with Indians must bear the burden of proof to show strict compliance with the statute.

"The business inexperience of the plaintiff stockholders does not give rise to any duty on the part of the bank to treat them in any manner different than it would treat any other customer inexperienced in business." App. B, 113.

The Court of Appeals did not even consider if the abrupt change in policy implicit in that statement was contemplated by Congress. It is critically important, therefore, that this Court exercise its role in supervising the lower federal courts by declaring the condition of these terminated Indians with reference to the body of law dealing with contracts Indians. Are the plaintiffs Indians, or were they deprived of their Indian status for all purposes along with Government services, as the Court of Appeals has assumed?

This Court has never squarely addressed itself to the question of whether the elimination of an Indian's condition

³³ The *Menominee* case was decided to resolve a conflict which developed between the *Sanapaw* case, *op. cit. supra* note 32, and *Menominee Tribe of Indians v. United States*, 388 F. 2d 998 (Ct. Cl. 1967). This court adopted the Court of Claims decision and rejected the *Sanapaw* case. Furthermore, the Court of Claims decision which this Court affirmed relied upon the district court decision in the *Klamath-Modoc* case, which the Ninth Circuit reversed.

as a protected ward also eliminates the effect of other presumptions of the law in the setting of a termination act. It is clear, however, that the holding of the Court of Appeals conflicts with the dictum of this Court in *Menominee Tribe v. United States*, *op. cit. supra*, where this Court ruled that at least one species of Indian rights — treaty rights — was not eliminated by the language the Court of Appeals relied upon:

“The provision of the Termination Act (25 U.S.C. §899) that ‘all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the members of the tribe’ plainly refers to the termination of federal supervision. The use of the word ‘statutes’ is potent evidence that no treaty was in mind.” 391 U.S. 412

We submit that the use of the word “statutes” is also potent evidence that the repeal of the case law of this and other courts dealing with Indians was not intended.

IV

THE BASES ON WHICH THE COURT OF APPEALS REJECTED RULE 10b-5 DUTY THREATENS THE FEDERAL SCHEME OF PROTECTION OF INVESTORS

Since the decision of *Kardon v. National Gypsum Co.*, 73 F. Supp. 798 (E.D. Penn. 1947), an imposing majority of Courts of Appeals have concluded that Rule 10b-5 creates a duty in a securities transaction. Judge Kirkpatrick announced the now familiar “Kardon doctrine.”

“Although not expressly provided for in the statute, a remedy by civil action to enforce such duties and liabilities was available to the plaintiffs. *The duty created is that of disclosure . . .*” (emphasis added) 73 F. Supp. 800.

Accord, *Kohler v. Kohler*, 319 F. 2d 634, 642 (7th Cir. 1964).

The Court of Appeals *rejected* the conclusion of the trial judge that Rule 10b-5 created such a duty, and held that a duty must be found with reference to state law, in the contract with the bank:

"no such duty was created by the practice of the bank and none was provided in the contract." App. B, 113.

Though not clearly articulated, the decision of the Court of Appeals stands for the proposition that the standards of Rule 10b-5 do not apply to ordinary banking transactions, or to transactions which are a part of a Federal program such as is prescribed by the Act, even though securities are involved. Thus, the Court of Appeals has undertaken to circumscribe the scope of Rule 10b-5 liability on criteria relating to the form of the transaction.

The overriding issue of National concern in the securities aspect of this case, which merits the attention of this Court, is not merely that the Court of Appeals incorrectly applied the law, for there are so many decisions from other Courts of Appeals attesting the wisdom of the Kardon doctrine that an anomalous error might not commend the energy of this Court. The reason, rather, is that the Court of Appeals has chosen to circumscribe the scope of liability under Rule 10b-5 without an inquiry into whether the substance of the transaction is within the policies Congress declared in adopting the securities laws. Such a precedent is a dangerous one, capable of much mischief if it is not corrected promptly by this Court.

Many urge that limits to Rule 10b-5 liability must be drawn, and it may well be that the future trend of cases to be decided by the Courts of Appeals will be in that direction. If so, it is most important that this Court establish it as a guide

that if limits are to be drawn, they must be with reference to the policy of protection of investors which is evident in the securities laws, and not merely according to the form the transaction may take. This case is a peculiarly appropriate subject for the establishment of such a guide because the plaintiffs are persons of a type who have the maximum need for the protections of the anti-fraud provisions: uneducated, poorly acculturated, naive and economically distressed. If the securities laws do not protect these, then who should they protect?

A. *Banking Transactions Are Regulated Under the Rule*

The Court of Appeals conclusion that performance of ministerial banking functions by the bank officers is not a "participation" of the type contemplated by the statute and Rule is squarely in conflict with the Court of Appeals for the Seventh Circuit decision in *Carroll v. First National Bank*, 413 F. 2d 353 (7th Cir. 1969) *cert. denied* 396 U.S. 1003. In the *Carroll* case, the bank and its officers allegedly created a "credit bubble" in connection with purchases of securities. Neither the bank nor its officers were directly involved as purchasers or sellers. Nevertheless, the Seventh Circuit held:

"We have recently reiterated that frauds 'in connection with' sales of securities are sufficient to invoke the jurisdiction of the 1934 Act and Rule 10b-5 so that the Bank's participation in this credit bubble fraud sufficiently states a claim against it under Section 10(b) and Rule 10b-5. Although the Bank may have neither bought nor sold securities for its own account, it was in a unique position to obtain the necessary time during which it was hoped that the value in the purchased securities would rise sufficiently to allow the participants in the scheme to use them in financing still further purchases. Moreover, as alleged in the amended complaint the Bank was able to conceal the precarious nature of the speculative purchases by arranging for

undisclosed or fictitious persons to bail out certain overdue transactions. Since the Bank was charged with being an aider and abettor in the fraud, it must now meet the merits of that charge. In our opinion the case alleged against it falls well within the outer limits of Section 10(b) and Rule 10b-5." (citations omitted) 413 F. 2d 357.

See also *Fratt v. Robinson*, 203 F. 2d 627, 630-31 (9th Cir. 1953) holding that the anti-fraud provisions are calculated to discourage "those who desire to promote crooked deals" in any effort to "by-pass security-dealing houses under regulation."

B. The Indian Laws Impose Additional, Not Inconsistent, Standards

Several aspects of the Court of Appeals decision, particularly at App. B, 110 and 114, suggest that conduct in implementation of the Act must be measured against the standards of the Act only, and not against the additional standards of Rule 10b-5. Again, the Court of Appeals position is not well articulated, but is revealed in its review of the contents of the contract with the bank negotiated as an implementation of the Act and the function of the bank's Roosevelt office in the termination program, and the conclusion that the fictitious affidavits were prepared in connection with the Act's "first refusal" provisions.

The Court of Appeals for the Ninth Circuit has held that inclusion of a security as a part of a non-securities transaction does not eliminate the need to comply with the provisions of the Rule. See *Errion v. Connell*, 236 F. 2d 447, 454 (9th Cir. 1956):

"We are of the opinion that the Act of 1934 was designed to cut out 'sharp practices' and fraudulent schemes involving securities, and the fact that there may be a co-mingling of securities with nonsecurities

in the scheme does not oust the United States District Court of jurisdiction."

The reasoning of the Court of Appeals for the Ninth Circuit is sound and should apply to this case, for the true effect of the provisions of the Act and the contract was to place the bank and its officers in a relationship of trust or confidence such as this Court, and other Courts of Appeals, have found amount to a "fiduciary" relationship. The trial court recognized this fact at App. A, 75-77. Fiduciary duties, if violated, import additional standards into Rule 10b-5, rather than excuse any need to comply with the Rule as the Court of Appeals apparently concluded herein. See *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963), where this court considered the role of a fiduciary, or quasi fiduciary, under the securities laws, in that case the publisher of an investment service:

"Fraud, indeed, in the sense of a court of equity properly includes all acts, omissions and concealments which involve a breach of legal or equitable duty, trust, or confidence, justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another.³⁴ Nor is it necessary in a suit against a fiduciary . . . to establish all the elements required in a suit against a party to an arm's length transaction. Courts have imposed on a fiduciary an affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts' as well as an affirmative obligation 'to employ reasonable care to avoid misleading' his clients." 375 U.S. 194.

The Court of Appeals for the Second Circuit in the recent landmark decision of *SEC v. Texas Gulf Sulphur Co.*, 401 F. 2d 833 (2d Cir. 1968) *cert. den. sub. nom. Coates v. SEC*, 394 U.S. 976 held that violation of such fiduciary duties gave rise to Rule 10b-5 liability, even though there was not a direct buyer-seller relationship, or "privity" such as the Court of Appeals herein considered necessary:

³⁴ Quoting from *Moore v. Crawford*, 130 U.S. 122 (1889).

"By [the Securities Exchange Act of 1934] Congress purposed to prevent inequitable and unfair practices and to insure fairness in securities transactions generally, whether conducted face-to-face, over the counter, or on exchanges. . . . Insiders, as directors or management officers are, of course, by this Rule, precluded from so unfairly dealing, but the Rule is also applicable to one possessing the information who may not be strictly termed an 'insider' within the meaning of Sec. 16(b) of the Act." (citations omitted) 401 F. 2d 848.

To the same effect, see *Kohler v. Kohler*, 319 F. 2d 634, 637-8 (7th Cir. 1964).

C. *There Is no Requirement of Direct Dealing or "Privity"*

The Court of Appeals held that the bank officers, who the trial judge found had created a fraudulent market and implemented the fraudulent sales,³⁵ were not obligated to disclose the fraudulent practices because they were not directly involved as a purchaser of the Indian stock:

"the defendant had no obligation to determine whether the recitations made in the affidavit were correct or not³⁶ . . . Gale had no obligation to perform anything

³⁵ As regards the bank and its officers, the trial judge ruled that they contracted to discharge, for a fee, the duties of the government; that their "business agent" or "stock transfer agent" agreement obligated them to the duties of fiduciaries as regards the individual Indians and their property, though they were not strict trustees; that the officers of the bank disregarded their fiduciary duties and undertook to acquire the Indians stock in their own interest; that the bank officers acted in the dual role of brokers in the Indian stock, as agents for non-Indian purchasers; that the bank officers withheld material information from the Indians, misrepresented material facts, and engaged in fraudulent acts and practices, in connection with the stock purchases; and that the conduct of the bank officers was within the actual or apparent scope of their employment.

³⁶ In fact, the "affidavits" were merely blank pieces of paper, which were later completed with pertinent information such as price, name of purchaser, date, etc., so as to be in the form of an affidavit. See App. A, 50-51, 59-60, 84. See also, *E.g.*, App. A, 33-34. One who notarizes such an instrument cannot be said to perform a mere "ministerial act."

but the requested ministerial acts." App. B, 115-116.

In so holding, the Court of Appeals read out of the Rule the language which prohibits fraudulent practices accomplished "directly or indirectly" or "in connection with" the purchase or sale of a security.

"The 'participation' by defendant Gale in the execution of documents as shown by the record in connection with these sales cannot constitute a breach of duty on his part to any of the plaintiffs." App. B, 115.

The restrictive view of the Court of Appeals is in sharp contrast with the decision in *SEC v. Texas Gulf Sulphur Company, op. cit. supra.* at 860:

"Congress when it used to phrase 'in connection with the purchase or sale of any security' intended only that the device employed, whatever it might be, be of a sort that would cause reasonable investors to rely thereon, and, in connection therewith, so relying, cause them to purchase or sell a corporation's securities."

The Court of Appeals for the Seventh Circuit in *Brennan v. Midwestern United Life Insurance Co.*, 417 F. 2d 147 (7th Cir. 1969) *cert. denied* 397 U.S. 989 (1970) had no difficulty in discerning a duty created by the statute and Rule extending to a corporate defendant which was not a purchaser or seller. See also *Buttry v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 410 F. 2d 135 (7th Cir. 1969) *cert. denied* 396 U.S. 838:

"defendant reasons that since there are no allegations that Merrill Lynch defrauded the bankrupt in connection with these sales, there can be no predicate for violation of the Securities Act. However, it is well settled that parties may be liable for violations of the Act and Rule 10b-5 as long as they engage in fraudulent activity 'in connection with' the sale or purchase of securities or in a fraudulent 'course of business.'"

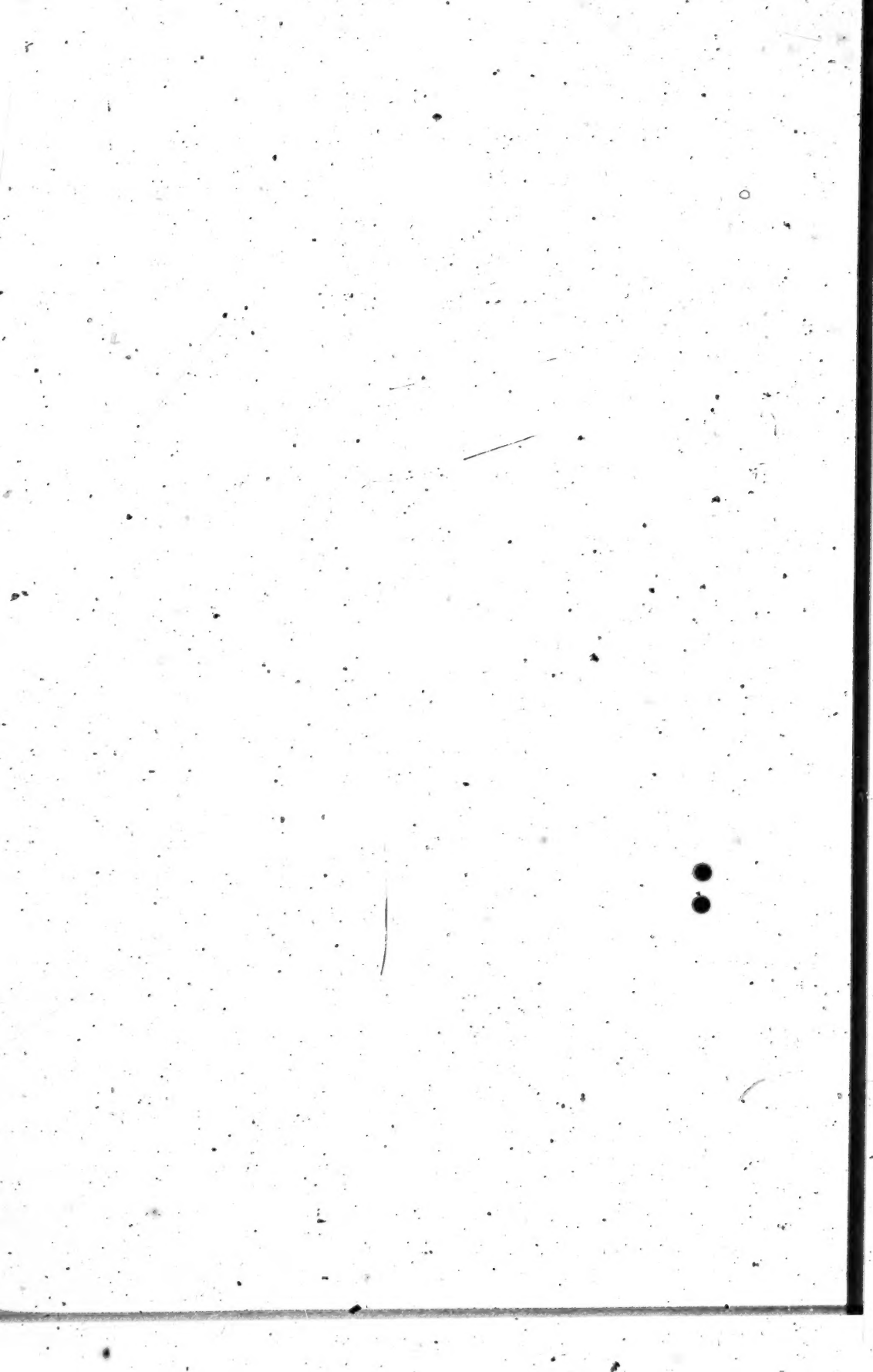
CONCLUSION

The disposition of this case by the Court of Appeals represents a harsh application of the Act and the related securities laws which is inconsistent with the purposes of Congress or the realities of the Indian's lives. Those who were legally incompetent on August 26, 1961, were held to be fully competent a short time later by fiat, without regard for whether they were so in fact, and deprived of protections in their securities transactions which other Courts of Appeals have extended to even the highly sophisticated entrepreneurs of Wall Street. The result was unnecessary, for the institutions set up by BIA to dictate the destinies of these Indians, which the Court of Appeals mechanically implemented, were not only not contemplated by the Act, but were contrary to the express requirements of the program which Congress visualized.

The disruption of the lives of the terminated Utes is a National tragedy, even though their numbers are small. The prevention of a recurrence of the tragedy in the lives of the many thousands of other Indian citizens is a matter of sufficient importance to justify review by this Court.

Respectfully submitted,

PARKER M. NIELSON
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Salt Lake City, Utah 84101
Attorney for Petitioners



FEB 9 1971

IN THE SUPREME COURT OF THE UNITED STATES

E. ROBERT SEAVER, CLERK

October Term, 1970

No. ~~1331~~ 70-78

AFFILIATED UTE CITIZENS OF THE STATE OF UTAH,

an unincorporated association formed by and under the supervision of the Secretary of the Department of the Interior pursuant to Public Law 83-671 (25 U.S.C. §§ 677-677aa) composed of 490 so-called "mixed-blood" members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, suing on its own behalf and as representative for and on behalf of its 490 members and their heirs and legal representatives as a class; and the 490 so-called "mixed-blood" members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, individually and as an identifiable Indian group or band.

Petitioners,

vs.

UNITED STATES OF AMERICA,

*Respondents.*ANITA REYOS, *et al*,*Petitioners,*

vs.

FIRST SECURITY BANK OF UTAH, N.A., UNITED STATES OF AMERICA, JOHN B. GALE AND VERL HASLEM,

Respondents.

APPENDIX

OF OPINIONS, STATUTES AND REGULATIONS
INVOLVED IN THE PETITION FOR CERTIORARI
OF AFFILIATED UTE CITIZENS OF THE
STATE OF UTAH AND ANITA REYOS, ET AL.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1970

No.

AFFILIATED UTE CITIZENS OF THE STATE OF UTAH,
an unincorporated association formed by and under the
supervision of the Secretary of the Department of the In-
terior pursuant to Public Law 83-671 (25 U.S.C. §§ 677-
677aa) composed of 490 so-called "mixed-blood" members
of the Ute Indian Tribe of the Uintah and Ouray Reserva-
tion, Utah, suing on its own behalf and as representative
for and on behalf of its 490 members and their heirs and
legal representatives as a class; and the 490 so-called
"mixed-blood" members of the Ute Indian Tribe of the
Uintah and Ouray Reservation, Utah, individually and as
an identifiable Indian group or band.

Petitioners,

vs.

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Respondents.

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STATE OF UTAH AND ANITA REYOS, ET AL.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION

ANITA REYOS, et al;

Plaintiffs,

vs.

FIRST SECURITY BANK OF UTAH, NA.,
a banking corporation of the State of Utah,
UNITED STATES OF AMERICA, JOHN
B. GALE and VERL HASLEM,

Defendants,

ASSOCIATION ON AMERICAN INDIAN
AFFAIRS, INC.,

*Intervenor and
Amicus Curiae*

No. C 39-65
FINDINGS
OF FACT
AND
CONCLU-
SIONS OF
LAW

This case came on for trial to the court sitting without a jury commencing on Tuesday, October 3, 1967, and continuing through Friday, October 6, 1967, and resumed on Wednesday, October 18, 1967, and concluding on Thursday, October 19, 1967. Adam M. Duncan, Esquire and Parker M. Nielson, Esquire, appeared on behalf of plaintiffs; H. Ralph Klemm, Esquire, Assistant United States Attorney, appeared on behalf of defendant, United States of America; Marvin J. Bertoch, Esquire, of Ray, Quinney and Nebeker, appeared on behalf of defendants, First Security Bank of Utah, N.A., John B. Gale and Verl Haslem. The motion of the Association on American Indian Affairs, Inc., to intervene and file brief as amicus curiae was heard and granted on October 18, 1967, Arthur Lazarus,

jr., Esquire appearing as counsel. In accordance with the pre-trial order, this trial was confined to the claims of twelve plaintiffs, referred to in the record as "bellweather" or "designated" plaintiffs and general factual and legal matters affecting their claims in common with the claims of the other plaintiffs herein. Said designated plaintiffs are Glen Reed, Fred Burson, Letha Wopsock, Louise A. Case, Melvin Reed, Marguerite M. Hendricks, Joseph Arthur Workman, Leonard Richard Burson, Oran F. Curry, Stewart Eugene Reed, Richard Henry Curry and Charles T. Reed. Witnesses were sworn and testified, documentary evidence adduced and briefs and memoranda of the parties submitted to the court. Whereupon the court, having duly and fully considered the law and the evidence and being fully informed and advised in the premises, and good cause appearing therefor, hereby makes and enters the following

FINDINGS OF FACT

PART I

GENERAL FINDINGS

1. Each of the plaintiffs was, prior to enactment of Public Law 671, adopted by the 83rd Congress on August 27, 1954 (68 Stat. 868, 25 U.S.C. 677, et seq.), a member of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah.

2. By reason of the enactment and implementation of Public Law 671, each of the designated plaintiffs was a so-called "mixed-blood" member of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah.

3. The Ute Distribution Corporation was incorporated under the laws of the State of Utah, and its corporate charter issued on or about December 9, 1958; and said Corporation is now and at all times since incorporation has been a corpor-

ation validly existing under the laws of the State of Utah. The purpose of the Corporation, as stated in Article IV of the Articles of Incorporation, was to manage jointly with the Tribal Business Committee of the full-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, pursuant to Public Law 671, as amended, a plan for distribution of the assets of the individual mixed-blood members of said Tribe, all unadjudicated or unliquidated claims against the United States, all gas, oil and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution to which the mixed-blood members of the Tribe, as defined and determined by Public Law 671, are now or may hereafter become entitled pursuant to said Public Law 671 or the laws of the United States, and to receive 27.1686 per cent of the net proceeds therefrom and to distribute said proceeds to the stockholders of the Corporation.

The Articles of Incorporation and the contents thereof were approved by the Secretary of the Interior. The Articles of Incorporation provided for 4,900 shares of capital stock of no par value. Each designated plaintiff was issued ten shares of the capital stock of the Corporation on or about the date of incorporation.

4. Article VIII of the Articles of Incorporation of said Ute Distribution Corporation provides in part that no sale of any stock of said Corporation prior to August 27, 1964, shall be valid unless and until offered to members of the Ute Tribe in such form as may be approved by the Secretary of the Interior. Article VIII further provides that if such Offer to Sell is not accepted by any member of the Tribe, the sale thereof to any person not a member of said Tribe may then be made, but only for the same or greater amount and upon the same terms and conditions upon which it was offered to said members, and provided the Superintendent of the Uintah

and Ouray Reservation certifies on the Stock Certificate that said offer to members of said Tribe was made in accordance with law and the regulations of the Secretary of the Interior.

5. Article VIII of the Articles of Incorporation of said Ute Distribution Corporation provides further that all stock certificates issued by the Corporation until August 27, 1964, shall have stamped thereon the following:

"Transfer of this certificate at any time prior to August 27, 1964, to a person not a member of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, as defined in Public Law 671 - 83rd Congress, approved August 27, 1954, 68 Stat. 868, shall be invalid unless the certificate of the Superintendent of the Uintah and Ouray Reservation is endorsed thereon showing that a prior and proper offer has been made to members of said tribe in accordance with law and the regulations of the Secretary of the Interior."

The said legend was printed on the obverse of all stock certificates of said Corporation issued prior to August 27, 1964, under the legend "Notice of Restriction on Transfer." The stock certificates included no printed form for the endorsement of the Superintendent thereon.

6. All stock certificates of Ute Distribution Corporation bore, on the face of said certificate, in red lettering, the following:

"WARNING

"This certificate does not represent stock in an ordinary business corporation. This corporation is organized for the purpose of distribution to the stockholders in the future their respective shares in the proceeds or income from all claims and assets in which the mixed-blood members of the Utah Indian Tribe of the Uintah and Ouray Reservation, Utah, have or will have an interest

under the provisions of Public Law 671 - 83rd Congress, approved August 27, 1954, 68 Stat. 868, as amended. The future value of, or return on this stock cannot be determined. This stock certificate should neither be sold nor encumbered by the owner thereof, but should be retained and preserved for the benefit of the stockholder and the stockholder's family."

And: (In black type):

"Countersigned, First Security Bank of Utah, N.A.,
Fourth South Office, Transfer Agent, Salt Lake City,
Utah, By

Authorized Officer"

7. At all times pertinent to the claims of plaintiffs herein, defendant First Security Bank of Utah, N.A. (a) was a corporation organized under the laws of the United States as a national banking corporation with offices and branches throughout the State of Utah; (b) maintained an office at Roosevelt, Utah; (c) was transfer agent of and for the capital stock of Ute Distribution Corporation; (d) was a signatory to and bound by the terms of a certain business agent agreement dated December 31, 1958 by and between the Bank and Ute Distribution Corporation; (e) was a signatory, to and bound by the terms of a certain trust agreement dated July 26, 1960, by and between the Bank and the Secretary of the Interior; (f) held in its Trust Department at its Main Office in Salt Lake City, Utah, physical possession of all issued and outstanding Ute Distribution Corporation stock certificates of the plaintiffs prior to transfer thereof.

8: At all times pertinent to the claims of plaintiffs herein, defendant John B. Gale and defendant Verl Haslem were employed by the First Security Bank at its Roosevelt office, as Assistant Managers, and were notaries public.

9. At all times pertinent to the claims of the plaintiffs herein, Mrs. Adelyn H. Logan (a) was the Realty Officer of the Uintah and Ouray Agency, Bureau of Indian Affairs, Ft. Duchesne, Utah; (b) made her home and maintained her residence at Ft. Duchesne, Utah; (c) was acting in her official capacity under the direction of the Superintendent of the Agency with respect to certain matters relating to the transfer of stock of Ute Distribution Corporation, including the receipt and posting of Offers to Sell, preparation of Notification forms that no offer had been received, receiving and examination of affidavits from the original stockholder that he had received in cash the advertised price and from whom, and preparing certificates and letters transmitted to the First Security Bank Trust Department in Salt Lake City, Utah, that such affidavits had been received and were on file at the Agency Office, that the offer to sell had been made in accordance with the law and regulations and the Articles of Incorporation of Ute Distribution Corporation and that there had been no acceptances of said offer.

10. On or about December 31, 1958, First Security Bank and Ute Distribution Corporation entered into a certain business agent agreement. This agreement was at all times subsequent to said date in full force and effect and the Bank was compensated for services rendered thereunder. Said agreement provides in part:

"The corporation has been organized for the purposes set forth in its Articles of Incorporation, a copy of which is attached hereto and made a part hereof. The Corporation requires a stock Transfer Agent; a Depository for its funds; an office in which to keep its records and books of account and where its business may be transacted; and an agency to keep its books, disburse its funds and otherwise assist it to carry into effect its corporate purposes. The Corporation has requested the

Bank of assist them in these matters and the Bank is ready, able and willing to assist them on the terms and conditions herein set forth.

"1. The Bank will be Stock Transfer Agent for the Corporation. . . .

"3. The Bank will receive and deposit in the Bank all funds paid or delivered to it by the Corporation in accordance with usual bookkeeping and accounting procedures. In this connection, the Bank will receive funds, issue checks against said funds, receive and hold documents, prepare and mail or otherwise deliver statements and reports and generally conduct the business for the corporation.

"4. . . . If, at any time, the Bank is uncertain as to its duties in connection with any matter, it may refrain from any action in connection therewith until said written, certified corporate resolutions and legal advice are received by it. . . ."

11. Pursuant to said business agent agreement, defendant, First Security Bank of Utah, N.A., maintained the stock transfer records of the Ute Distribution Corporation at its First South and Main Office in Salt Lake City, Utah, together with certain other documents and records relating to Ute Distribution Corporation, and maintained a resident office at Roosevelt, Utah, among other things for the purpose of facilitating and assisting "mixed-bloods" in the transfer of Ute Distribution Corporation stock.

12. On or about July 26, 1960, pursuant to Public Law 671, the Secretary of the Interior of the United States and First Security Bank of Utah, N.A., entered into a certain agreement denominated "Affiliated Ute Indian Trust Agreement." A principal purpose of this Agreement was to protect the "mixed-blood" beneficiaries of the trust against the im-

provident dissipation or loss of their assets, including their shares of Ute Distribution Corporation. The Agreement provided that the Bank, as Trustee, could in its sole discretion accept such additional funds or properties granted, conveyed, assigned or made payable to it by the Trustor, by a beneficiary, or by any other person or persons to become a part of the trust property and subject to its terms; and the trustee had the power to terminate the trust as to any beneficiary in its discretion but within the terms and conditions provided in said trust agreement.

13. Antelope Sheep Range Company was incorporated under the laws of the State of Utah on November 18, 1958. The Articles of Incorporation of Said Corporation provided for 490 shares of capital stock of no par value. Each "mixed-blood" member of the Ute Indian Tribe, Uintah and Ouray Reservation was issued one share of said capital stock at or about the date of incorporation.

14. Rock Creek Cattle Range Company was incorporated under the laws of the State of Utah on November 18, 1958. The Articles of Incorporation of said Corporation provided for 490 shares of capital stock of no par value. Each "mixed-blood" member of the Ute Indian Tribe, Uintah and Ouray Reservation, was issued one share of the said capital stock at or about the time of incorporation.

15. The Uintah and Ouray Agency caused to be prepared by the University of Utah, on its behalf, a Social Worker's File concerning the personal history of each "mixed-blood." The results of such investigations were submitted to and retained in the files of said Agency, prior to July 26, 1960, and at all times thereafter.

16. The following forms were prepared and promulgated by the Bureau of Indian Affairs: (a) "Offer to Sell" which

was signed by the "mixed-blood" Ute Indian and delivered to the Uintah and Ouray Agency; (b) "Notification" from the Superintendent that no acceptance of the offer to sell had been received and stating that the stock could now be sold for an amount not less than the amount asked from members of the Tribe and that sale should be on the same terms and conditions offered to the members of the Tribe; (c) "Certificate" that an offer to sell had been made, the amount thereof and that no acceptance had been made, signed by the Superintendent of the Uintah and Ouray Agency.

17. The said "Offer to Sell" provided in part:

"The seller hereby offers to sell certain property described as [blank] for an amount not less than [blank] and upon the following terms and conditions:

"Not less than 10% of the total consideration, made payable to the seller; shall be submitted with the Acceptance of Offer to Sell; within 30 calendar days of Acceptance of Offer to Sell, the balance of consideration, made payable to seller, shall be submitted to the Superintendent, Uintah and Ouray Agency, Fort Duchesne, Utah; failure to pay the balance of the consideration within the specified time will constitute a forfeit of the 10% deposit to the seller.

"All deposits are to be made by certified check, bank draft or postal money order made payable to the seller."

18. In no instance was the "Offer to Sell" of any "mixed-blood" Ute Indian accepted by the Ute Tribe or any member thereof.

19. The regulations adopted by the Secretary of the Interior, pursuant to the provisions of Public Law 671, and as published in 25 Code of Federal Regulations, provide in part (25 C.F.R. 243.8):

"If no acceptance is made by a member of the tribe to purchase such [Ute Distribution Corporation stock] the Superintendent shall notify the mixed-blood member making such offer that no member of the tribe has accepted the offer to sell and the mixed blood member may then sell such stock at any time within six months thereafter to any person at the same or greater price and upon the same terms and conditions upon which it was offered to the members."

20. The formation of and transfer of assets to Antelope Sheep Range Company and Rock Creek Cattle Range Company was approved by the Secretary of the Interior by reason of the authority granted the Secretary in Section 13 of Public Law 671 (25 U.S.C. 677-1). The formation of Ute Distribution Corporation was acquiesced in by the Secretary of the Interior presumably by reason of authority assumed by the Secretary of the Interior to have been granted under said section. None of the plaintiffs herein was a signatory to the Articles of Incorporation of any of the three said corporations.

21. None of the 12 designated plaintiffs was included as a beneficiary under the trust at the time of the sale of their stock in the Ute Distribution Corporation, although Charles T. Reed and Stewart Eugene Reed theretofore had been covered.

22. As far as the sales of the Ute Distribution Corporation stock were concerned, the employees of the Uintah and Ouray Agency, Bureau of Indian Affairs, followed the procedural steps expressly required by the provisions of 25 C.F.R. Section 243.

23. In all transfers of Ute Distribution Corporation stock made prior to August 27, 1964, the plaintiffs delivered an Offer to Sell, made in writing, to the Uintah and Ouray Agency

of the Bureau of Indian Affairs at Fort Duchesne, Utah, for the purpose of offering said stock to the Ute Indian Tribe and its members. Each offer to sell set forth the number of shares to be sold and the amount the seller would accept for the stock. In each instance, the Offer to Sell was posted by Agency personnel in at least six public places on the Indian Reservation. None of these Offers to Sell was accepted by the Tribe or a member thereof. After the offers had been posted for a period of 30 days, the Superintendent of the Uintah and Ouray Agency sent a letter of notification to each person who had offered his stock for sale. The notification stated, in each instance, that no acceptance of the Offer to Sell had been made by the Ute Indian Tribe or a member thereof. It set forth the procedure to be followed under the regulations when the stock was to be sold to another person. Unless otherwise noted in the individual case histories, each of the 12 designated plaintiffs received the letter of notification pertaining to each Offer to Sell his stock.

24. No employee or agent of the United States ever participated in the negotiations of any sale of Ute Distribution Corporation stock by the 12 designated plaintiffs.

25. Prior to the sale of their stock, all of the plaintiffs had received periodic distributions of money or "per capita payments" which had been made through the Ute Distribution Corporation. These payments represented distributions from judgments recovered against the Government and from earnings derived from the minerals on the Reservation. On each instance, the checks were made out directly to the recipient and were accompanied by a Corporation voucher stating the purpose of the payment. It was necessary for each of the 12 designated plaintiffs to endorse each check before cashing. There were eight payments made to them prior to August

26, 1963, the date of the first sale, varying from \$3.00 to \$30.00 per share.

26. It was general knowledge among the mixed-blood members of the Tribe that they were first required to offer to sell their stock to the Tribe before they could sell it to non-Indians. On several occasions, both in general stockholder meetings, as well as in Board of Directors' meetings, the attorney for the Corporation advised the mixed-bloods who were present that it was difficult to tell the value of the stock and that they should retain possession thereof. The mixed-bloods were generally uninformed and unaware of the value of the mineral interests of the Ute Indian Tribe or how such value affected that of their Ute Distribution Corporation stock.

27. From August 26, 1963 until August 27, 1964, over 800 shares of the 4,900 shares of Ute Distribution Corporation stock had been transferred by the original owner to a non-Indian buyer. On the date of trial, between 45 and 47 per cent of the 4,900 shares of the Ute Distribution Corporation stock had been sold by the original owners.

28. On August 26, 1961, the Secretary of the Interior published the following Termination Proclamation in the Federal Register, No. 165, Volume 26, Page 8042:

"Termination of Federal Supervision Over the Affairs of the Individual Mixed-Blood Members

"Pursuant to the authority contained in Section 23 of the Act of August 27, 1954 (68 Stat. 877, as amended; 25 U.S.C. 677v), it is hereby proclaimed that the Federal restrictions on the property of each individual mixed-blood member of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah having been removed, the Federal trust relationship to such indi-

vidual is terminated and that effective midnight, August 27, 1961, such individual shall not be entitled to any of the services performed for Indians because of his status as an Indian. All statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to such member over which supervision has been terminated, and the laws of the several States shall apply to such member in the same manner as they apply to other citizens within their jurisdiction.

STEWART L. UDALL,
Secretary of the Interior

August 24, 1961"

[F.R. Doc. 61-8225; Filed Aug. 25, 1961; 8:49 a.m.]

This proclamation took effect on August 27, 1961. Pursuant thereto and by operation of Public Law 671, the mixed-bloods, on August 27, 1961, lost many rights, privileges and services which had theretofore been granted to them by reason of their status as Indians. These included hunting and fishing rights on the Reservation, free public health services, exemption from taxation of land, law and order services, economic and development services, education assistance, employment preferences, bank services, water rights, credit and financing services, real property management services and social services.

29. The devision of the assets of the Ute Indian Tribe between the Tribe and the mixed-blood members thereof, and the division of the individual assets to said mixed-bloods, was completed prior to August 27, 1961, aside from realization on individual interests allocated by said division, and the custody of stock certificates issued to accomplish such division.

30. As to most if not all of the transfers of Ute Distribution Corporation stock by plaintiffs, either defendant Gale or

defendant Haslem, or some other officer, agent or employee of the defendant First Security Bank, endorsed the stock certificate or other instrument of transfer in the capacity of a signature guarantor.

31. It was generally known among the mixed-bloods that said stock should not be sold for less than the amount advertised, and that the stock had substantial value; but the mixed-bloods who sold their stock were generally less well informed, and generally less capable of appreciating and understanding the significance of such information than the white persons with whom they dealt and usually were acting under extreme economic pressure.

PART II

INDIVIDUAL CASE HISTORIES OF THE 12 DESIGNATED PLAINTIFFS

1. GLEN V. REED, M.B. Number 354, sold 10 shares.

(a) *Personal background:* He was born April 4, 1919. The Social Workers' File of the Uintah and Ouray Agency reports that he was sent to Los Angeles, California on January 25, 1956 by the Bureau of Indian Affairs for vocational training; that he was a very poor trainee and spent more time in the County jail than he did in training and returned to Utah on June 1, 1956; that it would appear from his record that he has problems in conforming to the demands of society. The file indicates 15 criminal convictions for minor criminal offenses during the period December 29, 1953 through July 1, 1959. Superintendent Zollar made no efforts to place Mr. Reed under a trust or to furnish other special protection to him in relation to his stock. Mr. Reed is the father of Glennis

Joan Reed Daniels, M.B. No. 355, Judy Gay Reed, M.B. No. 356, Linda Reed, M.B. No. 357, Joeline Reed, M.B. No. 358 and Marjorie Ellen Reed, M.B. No. 359, all of whose assets were administered by First Security Bank under the Affiliated Ute Indian Trust Agreement. Mr. Reed is a high school graduate and a veteran of service in the United States Army, from which he was honorably discharged. He believed the stock represented some per capita payments. He also believed that the stock represented some interests in the reservation.

(b) *First Transaction:* On or about July 8, 1964, five shares were sold to John B. Gale for \$1,750, paid by a First Security Bank cashier's check, after the shares had been offered for sale at the Uintah and Ouray Agency on June 1, 1964, at \$350 per share and the offering completed on August 10, 1964. A document denominated "stock power" dated August 10, 1964, and a document denominated "affidavit" reciting that he received \$1,750 dated August 10, 1964, were signed by him, but the names of the transferees were not filled in at the time they were signed. The affidavit was notarized and the signature on the stock power guaranteed by John B. Gale. Mr. Gale purchased these shares for Neal H. Phelps and Esther Phelps of Arizona, both of whom were and are unknown to Mr. Reed, pursuant to an arrangement whereby they had deposited funds with First Security Bank at Roosevelt, Utah, for the purpose of acquiring Ute Distribution Corporation stock, and Mr. Gale was paid \$530 per share for the stock by the Phelps. Mr. Reed was not advised that the stock was being purchased for the Phelps, or the price which they were paying for it. A certificate dated August 13, 1964, signed by B. Narcho, acting Superintendent, was issued to First Security Bank reciting that the law and regulations relative to the offer had been complied with. In August, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of

Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on August 25, 1964, by the bank.

(c) *Second Transaction:* During the latter part of August, 1964, five shares were sold to Verl Haslem for \$2,000 pursuant to a telephone agreement and formally transferred about August 31, 1964. The shares were actually transferred to Robert E. Shaw of Dixon, Illinois, for an amount which is not of record. Reed signed his name to the endorsement form on the reverse of stock certificate No. 844 on the hood of Haslem's automobile in the nighttime and Reed did not read the legends on the certificate. His signature was guaranteed by Haslem. Reed does not know Shaw and was not advised by Haslem that the stock was being transferred to Shaw or the amount that Shaw was paying for it. The shares were not offered for sale with the Uintah and Ouray Agency. Mr. Reed signed a receipt for \$2,000 on August 30, 1964.

(d) *Additional Facts:* In the first transaction, Reed discussed the proposed sale with Gale prior to June 1, 1964, when his offer to sell was filed with the Uintah and Ouray Agency at which time he requested \$2,000 but was told that \$1,750 was the most people were paying unless he made a deal with Nick (Richard) Murray for cash and an automobile, whereupon he offered them for sale at the suggested price of \$1,750. He made his deal with Gale, who advanced him money on it, prior to the date when the advertising was completed. In the second sale, he was importuned to sell by Haslem, who contacted Reed in Salt Lake City by telephone. At the request of Mr. Haslem, they met in Heber, Wasatch County, to close the transaction. Haslem had Reed's certificate, which

Reed had never before seen, with him when they met. Reed requested \$2,500 from Haslem, who told him that \$2,000 was the most he could pay.

2. FRED LAROSE BURSON, M.B. NO. 22, sold 10 shares.

(a) *Personal Background*: He was born April 11, 1935. His Social Workers' File at the Uintah and Ouray Agency showed that he drank to excess, had an extensive record of minor criminal offenses; that the University of Utah field representatives had been unable to help him; that the Bureau of Indian Affairs had sent Mr. Burson to Weber College for a course in auto mechanics, which he started in October, 1957, and terminated in November, 1957. The said report concluded: "There seems to be little to be done for Fred." Mr. Burson was, at the time of this trial, serving time in the Salt Lake County Jail for public intoxication. Mr. Burson served in the U.S. Air Force in 1956 and 1957. The Superintendent made no efforts to place Mr. Burson under a trust or to furnish other special protection to him in relation to his stock.

(b) *First Transaction*: On or about November 6, 1963, six shares were sold to R. Earl Dillman for two 1956 model Ford automobiles and \$1,000 cash. When the documents of transfer were presented to the Uintah and Ouray Agency and First Security Bank, they had been altered so as to actually transfer six shares. He filed an offer to sell six shares with the Uintah and Ouray Agency on August 8, 1963, for \$2,500, but there was no acceptance of the offer. The offering was completed on November 4, 1963. A document denominated "affidavit" reciting that he received \$2,500 was signed by him, dated November 6, 1963, and notarized by Dick Bastian. A second document denominated "stock power" which was prepared on Duchesne County letterhead, was also signed by him, dated November 6, 1963, and the signature guaranteed by John

B. Gale. A certificate dated October 3, 1963, signed by Superintendent Zollar was issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with, and that the required affidavit had been executed by which Burson declared he had received the advertised value. There is no evidence that the two automobiles purchased were worth less than \$1,500.

Neither Gale, Haslem nor the Bank had anything directly to do with the sales negotiation, nor did they receive anything from the sale.

(c) *Second Transaction:* In December of 1963, four shares were sold to one Jack Turner, doing business as B.L.I. Trailer Sales, for a trailer house. Four shares were offered for sale on December 4, 1963, for \$2,000 and no acceptance of the offer was received. The offering was completed on February 6, 1964. At the time of sale, he signed a document denominated "stock power" and a document denominated "affidavit" both of which were signed in the presence of John B. Gale at First Security Bank, Roosevelt. Both documents were guaranteed and notarized, respectively, on February 10, 1964, by John B. Gale. A certificate dated February 10, 1964, was signed by Superintendent Zollar and issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with, and that the affidavit had been executed and was on file. Neither Gale, Haslem nor the Bank directly received anything from the sale except a fifty cent notary fee paid to the Bank and they did not participate in the negotiations involved in the sale.

(d) *Additional Facts:* The documents filed with the Superintendent relative to the first sale, bear the notations of Mrs. Logan to the effect that the word "five" was typed in and "six" written over it in the place where the number of

shares was indicated, but she did nothing. Mrs. Logan also knew that Mr. Bastian, the notary on the affidavit in the first sale, was a partner of Mr. Dillman, the transferee, in a used car business. The files of the Indian Agency also indicate that Burson had sold one share of his stock to one Sewell Massey on January 30, 1964. The offering provisions had not yet been completed and the files indicate that the document was never transmitted to the Bank and the transfer was never completed. In relation to the first sale, Burson never actually appeared before John B. Gale to sign any documents.

3. LETHA HARRIS WOPSOCK, M. B. NO. 467, sold 15 shares.

(a) *Personal Background*: She was born February 19, 1917. She is married to full-blood John Wopsock and has ten children. She is the only mixed blood member of the family. She completed 10 years of school, can read but her understanding of what she reads is limited. Her Social Workers' Report in the files of the Uintah and Ouray Agency indicates requests for children's funds; that Mr. Wopsock was considered somewhat improvident; that she incurred many debts in Roosevelt; and that it was obvious that this large family would have difficulty in managing on the income of Mr. Wopsock. The said report concludes: "It is possible that Mrs. Wopsock should be under the supervision of a trustee following termination, but we are not making such a recommendation." At June 15, 1960, Mrs. Wopsock owed First Security Bank, Roosevelt Branch, \$336.60 on a delinquent contract for a range and refrigerator. An appended document entitled "Credit History" and dated July 1959, states that "The Wopsocks are known for going too far in debt, both here and with commercial businesses." The Superintendent made no efforts to place Mrs. Wopsock under a trust or to furnish other special protection to her in relation to her stock. In addition to the 10 shares

issued to her, Mrs. Wopsock inherited an additional 5 shares from her mother, Annie Pike Harris.

(b) *First Transaction:* On or about August 1, 1963, she exchanged five shares of Ute Distribution Corporation Stock and a 1960 GMC pick-up truck to one Clyde Murray for a new 1962 GMC pick-up truck and camper, and still owed him \$54 per month for three years. The stock was offered for sale with the Uintah and Ouray Agency on September 3, 1963, for \$2,500 and no acceptance was received. The offering was completed on November 4, 1963. She signed a document denominated "stock power" and a document denominated "Affidavit" reciting that she received \$2,500 which were guaranteed and notarized, respectively, by John B. Gale. A certificate dated November 8, 1963, was signed by Superintendent Zollar and issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with. On November 8, 1963, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on November 14, 1963, by the bank. There is no evidence as to the actual value of the truck exchanged for the stock. Neither Gale, Haslem nor the bank directly received anything from the sale except a fifty cent notary fee.

(c) *Second Transaction:* On or about February 24, 1964, she transferred two shares to one Bill Hoopes in exchange for satisfaction of a bill at the trading post and some cash, plus some additional credit at the trading post which she considers to have a combined value of \$1,400. Five shares were offered for sale with the Uintah and Ouray Agency on December 16,

1963, for \$3,500 and no acceptance of the offer was received. The offering was completed on February 6, 1964. She signed a document denominated "stock power" before John B. Gale on February 24, 1964, and Gale also guaranteed the signature. She also signed a document denominated "affidavit" dated February 18, 1964, to the effect that she received \$1,400 cash. A certificate dated February 26, 1964, was signed by Superintendent Zollar and issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with. On February 26, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on March 6, 1964, by the bank. Neither Gale, Haslem nor the bank directly received anything from this transaction except a fifty cent notary fee.

(d) *Third Transaction:* On August 28, 1964, she sold an additional 3 shares to Mr. Hoopes for credit at the Trading Post which she valued at \$1,000. These shares were not offered for sale with the Uintah and Ouray Agency. She signed a document denominated "stock power" which was guaranteed by John B. Gale.

(e) *Fourth Transaction:* After August 27, 1964, she sold 3 shares to John B. Gale for a sum which she believes to be about \$350 cash. She endorsed a document denominated "stock power" which was undated and incomplete as to transferee. The stock was actually resold to Norval R. Johnson and Fern Johnson whose names were filled in as transferees. She does not know the Johnsons, and was not told that her stock was being transferred to them. Her signature on the stock

power was guaranteed by Verl Haslem. The shares were never offered for sale at the Uintah and Ouray Agency.

(f) *Fifth Transaction:* In October, 1964, she sold one share to Mr. John B. Gale and on November 3, 1964, she sold one share to Mr. Gale. She received \$400 and \$350 respectively for each share, which was paid to her in installments as she requested it. She endorsed certificates Nos. 958 and 922 in relation to these transactions, neither of which was offered for sale with the Uintah and Ouray Agency.

(g) *Additional Facts:* In relation to her sales to John B. Gale, Mrs. Wopsock made the sales because she needed money for Christmas. She asked \$400 per share from Mr. Gale but he told her \$300 was the most he could pay and they finally agreed to a price of \$350. Gale did not tell her in relation to the Fourth transaction that he was acting as agent nor that he was reselling the stock at a higher price, which was the fact. She signed the back of the Ute Distribution Corporation stock certificate in relation to the Fifth transaction, but did not read it and was not permitted to read it by Mr. Gale. At the time of the first offer to sell, she went to Mrs. Logan at the Uintah and Ouray Agency, who instructed her in how to offer the stock. Mrs. Logan advised her that the shares were worth in excess of \$700 each. In relation to the first sale, Gale was told that she was getting a truck. In each case Mrs. Wopsock went to the buyer to sell her stock. She was satisfied with her sale to Mr. Hoopes for \$700.

4. LOUISE ALLEN CASE, M.B. No. 39, sold 10 shares.

(a) *Personal Background:* She was born January 21, 1916, and has six children. Her Social Workers' File at the Uintah and Ouray Agency indicates that she had received assistance from the Duchesne Department of Public Welfare

since 1952, and regularly since 1955; that she was divorced and her husband had a heart condition, making it impossible for him to contribute more than \$20 per month to the support of the children. The report concludes: "Mrs. Case will, no doubt, need continued help and guidance from the Department of Public Welfare. Supervision by a Trustee is not indicated." Superintendent Zollar took no action relative to placing Mrs. Case under a trust or to establish any other special protection for her in relation to her stock. She borrowed money from the tribal credit fund to purchase a home, land and livestock. The case worker stated that she responds well to local adult educational offerings under the University of Utah program. In 1959 she had a realty mortgage on two city lots, which included buildings and improvements covered by fire insurance in the sum of \$7,000.

(b) *First Transaction*: On or about November 6, 1963, she sold five shares to one LaVere Labrum for a 1957 Ford automobile and \$1,700. These shares were offered for sale at the Uintah and Ouray Agency on September 9, 1963, for \$2,500, and no acceptance of the offer was received. The offering was completed on November 4, 1963. On November 6, 1963, she signed two sets of documents entitled "stock power" and "affidavit" assigning three shares to Lynn Labrum and Marion Labrum and two shares to Lloyd L. Labrum and Oleta M. Labrum. She believes that these documents were complete on their face when they were signed, at the office of John B. Gale and in his presence, and each of them were afterwards guaranteed and notarized, respectively, by John B. Gale. The affidavits recite that she received \$1,500 cash from Lynn Labrum and Miriam Labrum and \$1,000 cash from Lloyd L. Labrum and Oleta M. Labrum. At the time these documents were signed, Gale delivered to her a First Security Bank cashier's check in the sum of \$2,500 which she endorsed and returned to Gale who then paid her the sum of \$1,700,

and paid Labrum for the automobile. She had discussed the matter of sale with LaVere Labrum prior to the time the shares were offered for sale, and Labrum gave her \$50 cash and some gasoline during the period of time that the stock was being offered with the understanding that it would be applied toward the sale. A certificate dated November 8, 1963, signed by Superintendent Zollar was issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with. On November 8, 1963, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on November 14, 1963, by the bank. The car was valued for the purposes of the transaction at \$700 and its actual value is not disclosed by the evidence. Gale received a fifty cent notary public fee.

(c) *Second Transaction:* She sold three shares to Richard Murray for \$1,320, \$440 per share. On February 24, 1964, she offered five shares for sale with the Uintah and Ouray Agency for \$2,500 and acceptance of the offer was never received. In fact, the offering procedure was not completed until May 7, 1964. Mrs. Case, at the time of sale, signed blank documents denominated "stock power" and "affidavit" which were later filled in by some person whose identity is unknown to her, guaranteed and notarized, respectively, by Mr. John B. Gale and dated May 7, 1964. The documents show the transferees to be Tillie Lerma Gullstrom and Laura J. Wood of Mason, Illinois, both of whom were clients of Mr. Gale, and Mrs. Case does not know either of them nor was she advised that they were the purchasers of her stock or the amount which they were paying for it. The affidavits were completed to

show that she received \$1,400 and \$700, respectively. On May 15, 1964, a certificate was signed by Superintendent Zollar and issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with. On May 15, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on May 25, 1964, by the bank. She stated she was satisfied with the deal she made with Murray at the time.

(d) *Third Transaction:* In June of 1964, she sold two shares to one Dick E. Bastian for \$800. The shares had been offered for sale with the Uintah and Ouray Agency as recited in relation to her second transaction. She executed a document denominated "stock power" and a document denominated "affidavit" reciting that she received \$1,000 but, in fact, at the time of the transaction, she received a check for \$800 from Bastian and an additional check for \$200 which was immediately endorsed and returned to Bastian. A certificate dated June 29, 1964, was signed by Superintendent Zollar and issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with. On June 29, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on July 9, 1964, by the bank.

(e) *Additional Facts:* Although Mrs. Case received automobiles, she was then and now is unable to drive. Mrs. Case was in need of money and on public welfare at the time of the first sale and the second and third sales were made because she was in further need of money, having been taken off welfare by reason of the money which she was supposed to have received on the first sale. When the documents of sale relative to the third sale were received by Mrs. Logan at the Uintah and Ouray Agency, she noted that the purchaser was also the notary on the affidavit, but did not attempt to verify the regularity of the transaction. In relation to the first transaction, Mrs. Case attempted to read the documents being signed by her in the presence of Mr. Gale, but he immediately took them away from her and told her that she wouldn't understand them anyway. On the first sale, Gale gave her a cashier's check, which she endorsed and returned to Gale, who then paid Labrum. When Mrs. Case objected to this procedure, Gale said, "Well, you got a car didn't you?" Mrs. Case had already sold stock in the Antelope Sheep Range Company and Rock Creek Cattle Range Company and was familiar with the offering procedure and the requirements of the regulations issued in connection therewith. She knew that she wasn't supposed to sell the stock for less than the offered price.

5. MELVIN REED, M.B. NO. 380, sold 10 shares.

(a) *Personal Background:* Mr. Reed was born on March 27, 1937. His Social Workers' File at the Uintah and Ouray Agency reads in part: "Mr. Reed completed 4 months of vocational training in diesel mechanics in 1958, dropped out and returned to the reservation. He had earlier taken eight months of training in radio and TV repair provided by the Bureau in Denver, 1957-1958 and dropped out after numerous encounters with the law and because of financial and scholastic prob-

lems. . . . He does have a court history with two offenses in Salt Lake City and three offenses committed in Uintah and Duchesne Counties." The report further stated that "This individual is apparently able to manage his own affairs without supervision." An appended report reads in part: "Mr. Reed discontinued his training after numerous encounters with the law. Mr. Reed had difficulty with finances while in Denver. Relocation reports reveal that Mr. Reed was a poor student." The Social Workers' File also contains numerous letters setting forth the financial obligations, problems and related matters of Mr. Reed. Superintendent Zollar took no action relative to placing Mr. Reed under a trust or otherwise affording him special protection in respect to his stock. Mr. Reed was incarcerated at the Utah State Penitentiary at the time of trial in this case, having been returned to the penitentiary for parole violations after being initially committed for forgery.

(b) *First Transaction:* On or about the 11th day of March, 1964, Mr. Reed sold ten shares of stock to one Richard Murray for a 1959 Cadillac which was returned to Mr. Murray about eleven days later, at which time he was given \$1,000. Mr. Reed also received approximately \$480 in cash at the time of the sale, and Mr. Murray applied approximately \$25 to the payment of a fine against Mr. Murray for drunkenness. All ten shares were offered for sale for the sum of \$6,500 with the Uintah and Ouray Agency on September 27, 1963, and no acceptance of the offer was received. The offering was completed on November 4, 1963. On March 11, 1964, he executed a document denominated "stock power" and a second document denominated "affidavit," both of which were blank forms at the time they were signed and both of which were later guaranteed and notarized respectively by John B. Gale so as to indicate that he received the sum of \$6,500 from Mr. Murray. In reply to Gale's question whether Reed had got the money the latter said that "Everything was square." The

blanks were filled in out of Mr. Reed's presence by someone whose identity is unknown to him. Gale and Murray appeared to Reed to be in competition for the purchase of these shares. On March 16, 1964, a certificate was signed and issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with. On March 16, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on March 24, 1964, by the bank.

(c) *Additional Facts:* Mr. Reed was released from the Utah State Penitentiary on parole on or about March 10, 1964, and was arrested the same day in Roosevelt, Utah, for public intoxication. On or about March 11, 1964, he was brought before defendant John B. Gale as Justice of the Peace, who inquired if he wished to sell his Ute Distribuiton Corporation stock, to which Mr. Reed replied, "I don't know" and Judge Gale thereafter sentenced him to a fine and he was released after he told Gale he would have to pay the fine from the sale of his stock. Later that same day, Mr. Richard Murray came to Mr. Reed's sister's home where he was sleeping off the effects of intoxication, with a used Cadillac and said that he understood Mr. Reed was interested in buying a Cadillac. They went for a ride in the car, during which time he and three others drank a pint of whiskey, supplied by Mr. Murray, and after the whiskey was consumed, Mr. Reed agreed to purchase the Cadillac. The following day, while Mr. Reed was suffering the after effects of intoxication, the blank forms were signed before Mr. Gale. About ten days later, while Mr. Reed was again intoxicated and the automobile was being

operated by a female companion, it was involved in a traffic accident in Heber City, Utah, and a short time thereafter, Mr. Murray met with Mr. Reed in Heber City, and the Cadillac was returned to him in exchange for the \$1,000 recited above. A short time later, he was returned to the Utah State Prison for a parole violation where he remained to the time of the trial. No evidence was adduced as to the reasonable market value of the Cadillac, and no complaint was made by Reed concerning its quality.

6. MARGUERITE MURRAY HENDRICKS, M.B. No. 178, sold 10 shares.

(a) *Personal Background*: She was born May 30, 1903, and has three children. Her Social Workers' Report at the Uintah and Ouray Agency reads in part:

"Mrs. Hendricks is said to have been married several times in the past, but we have no record of it. . . . During the past year or so she became so disturbed over the planned termination that she directed a series of complaint letters to the Commissioner of Indian Affairs, Assistant Secretary Ernst and to Senators. At the same time, she harrassed Agency officials. . . . The Agency Superintendent's letter to the Commissioner pointed out that Mrs. Hendricks reflects the attitude of her family with respect to termination. The entire group felt they should have been in the Full Blood Roll, but the operation of Public Law 671 prohibited them from doing so. The attitude of Mrs. Hendricks and the entire Murray clan on termination makes it impossible for anyone at the Agency to have any semblance of a working relationship with them. Credit History: On 9-29-52, Mrs. Hendricks borrowed \$7,953.75 (CF loan #800) to be spent in this manner: \$6,000.00 for 200 sheep . . . Mrs. Hendricks reported she lost her sheep and did not know what became of them . . . The

credit office reported that it is not easy to converse with Mrs. Hendricks. She does not always know what one means and also one does not know what she means."

The report also said:

"In her complaints she stated she was writing on behalf of her fellow members of the Ute Citizens and requested the abolishment of termination, and the removal of Attorney John S. Boyden. She complained that her delinquent irrigation charges amounted to \$1,353.19, when she did not use this service; and when she sold her 40 acre property this would be deducted from the sale price which she thought was unfair."

The file also contains a letter recieved by the Indian Agency on July 20, 1960, wherein Mrs. Hendricks states that she is "without a crumb of food in my home. Still I am staying and trying to take care of my garden and my chickens. . . . I have definitely no support or transportation and I am desperately in need of assistance. . . ." and a letter dated October 12, 1959, wherein Mrs. Hendricks says in part, "I do not have means of transportation, neither do I have the price of a phone call. . . . I received \$100 from my per capita and I laid it down on my grocery bill and I still have a grocery bill of \$300. . . . My rent was due on the 7th and my landlord is threatening to throw me out. . . . I have been helping my little grandchildren to live. So I never have a dime for my own benefit and it is getting plenty tough. . . ." A letter of January 6, 1959, in the file states that Mrs. Hendricks "needs welfare assistance for the following: food, coal, utilities and rent for the three months." Despite the foregoing, Superintendent Zollar took no action to place Mrs. Hendricks under a trust or to establish other special protection in relation to her stock. Letters written by her appearing in the agency file reveal that she is acquainted with the accepted form of such correspondence, that

her penmanship is good and her grammar, spelling, punctuation and vocabulary much above the average for members of her tribe and at least fair as measured by general adult standards.

(b) *First Transaction:* On November 5, 1963, she sold five shares to Clyde R. Murray for a 1962 Comet automobile. The shares were offered for sale at the Uintah and Ouray Agency on September 3, 1963, for \$700 per share, and no acceptance thereof was received. The offering was completed on November 4, 1963. Mrs. Hendricks signed a document denominated "stock power" and a document denominated "affidavit," the signature on the stock power being guaranteed by John B. Gale and the affidavit notarized by Jerry M. Murray. The affidavit recited that she received \$3,500 but she did not receive anything for said stock beyond the Comet automobile. The documents were blank forms at the time she signed them. A certificate dated November 8, 1963, was signed by Superintendent Zollar and submitted to First Security Bank reciting that the law and regulations relative to the offering had been complied with. On November 8, 1963, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on November 14, 1963, by the bank. Gale handled the notarization of the affidavit and guaranteed the signature but did not participate in the sales transaction except as in these findings otherwise indicated.

(c) *Second Transaction:* On February 18, 1964, she sold five shares of stock to Richard Murray in exchange for some

real property in Neola, Utah. The stock was offered for sale at the Uintah and Ouray Agency on January 6, 1964, at a price of \$3,500 and no acceptance of the offer was received. The offering was completed on February 6, 1964. She signed a document denominated "stock power" and a document denominated "affidavit" both of which were blank forms at the time she signed them and both of which were dated February 18, 1964, with signature guaranteed and the affidavit notarized by John B. Gale. The affidavit recited that she received \$3,500, although she received no cash in this transaction. A certificate dated February 18, 1964, was signed by Superintendent Zollar and submitted to First Security Bank reciting that the law and regulations relative to the offering had been complied with. On February 20, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on March 2, 1964, by the bank. Gale did not participate in the sales transaction and he received only a fifty cent notary fee.

(d) *Additional Facts:* Mrs. Hendricks is hard of hearing and appeared to have considerable difficulty in understanding questions on the witness stand. She also appeared to be unable to intelligently understand the transactions in which she sold her stock, or the nature of the consideration which she received for it. The documents presented to Mrs. Logan at the Uintah and Ouray Agency note the family relationship between the purchaser in the first sale and the notary, but she did not attempt to determine the regularity of either transaction.

7: JOSEPH ARTHUR WORKMAN, M.B. Number 474, sold 7 shares.

(a) *Personal Background:* He was born on July 2, 1909. The social worker's file at the Indian Agency states in part: "Joseph A. Workman is a member of the Board of Directors of the Affiliated Ute Citizens. There seems to be little information about him in Bureau files other than Credit and IIM. In 1954, he apparently was living in Richfield and in 1956 he reported his address as Altonah. We do not know the reasons for the moves, nor do we know how Mr. Workman supports himself and wife . . . we presume that he can manage his own affairs in a satisfactory manner." Superintendent Zollar took no action to place Mr. Workman on a trust or otherwise to establish special protection in relation to his stock. Mr. Workman was one of the five members of the Board of Directors of the Affiliated Ute Citizens from 1958 to 1961. He met with bank officers and agency officers and tribal attorneys and participated in the formulation of the Transfer Agent Agreement and in the division of the assets of the Ute Indian Tribe between the mixed blood and full blood members thereof. He also assisted in the division of the assets to the individual mixed blood members. At the time of trial he was employed in a store and formerly operated his own business, hiring employees and handling various types of oil and gas products. Mr. Workman frequently heard advice from the tribal attorney and others that the half bloods should retain their stock.

(b) *First Transaction:* On or about February 10, 1964, he sold six shares of stock to one Robert Huish for \$3,000. The stock was offered for sale with the Uintah and Ouray Agency on November 26, 1963, for \$500 per share, or a total of \$3,000. At the time of sale, he signed a document denominated "Affi-

davit" before John B. Gale at First Security Bank in Roosevelt, acknowledging receipt of \$3,000, and the document was complete at the time it was signed by him. He also signed a document denominated "stock power" transferring six shares of stock to Huish, signature being guaranteed by Gale, and this document was also complete at the time it was signed by him. A certificate dated February 13, 1964, was signed by Superintendent Zollar and submitted to First Security Bank stating that the law and regulations relative the offering were complied with. On February 14, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on February 18, 1964, by the bank. Mr. Workman was satisfied with one of his sales for \$500 per share and still is. He was in a position to know more about the value of the stocks than most of the other half bloods.

(c) *Second Transaction:* On or about November 27, 1964, he sold one share of stock to Verl Haslem for \$350 by endorsing stock certificate number 712. Said stock certificate indicates that the stock was actually transferred to an Acel Haslem, a member of the Verl Haslem family. This stock was not offered for sale at the Uintah and Ouray Agency, and the sale was negotiated at First Security Bank in Roosevelt.

(d) *Additional Facts:* Mr. Workman was formerly a member of the Board of Directors of the Affiliated Ute Citizens, a group which represented the mixed blood group, and went out of existence at or about August 27, 1961. He knew

and understood that his Ute Distribution Corporation stock represented an interest in the tribal minerals but on the occasion of each of his two sales he was under pressure to make payments on outstanding loans at First Security Bank at Roosevelt, Utah, and would not have sold his stock had he not been under pressure from said creditor. Mr. Workman testified that the Ute Distribution Corporation took over from the Affiliated Ute Citizens on August 27, 1961. He knew the purpose and had more than the ordinary knowledge of the possibilities of the corporation, as well as what his stock represented. The distribution of the stock was part of the distribution of assets of the tribe to the individual members. He attended numerous meetings prior to termination where termination was discussed. Thirty-five to seventy-five mixed-bloods would attend these meetings. Occasionally they discussed the potential value of the stock and Mr. John Boyden, counsel for the council of the mixed-bloods, often advised the people in attendance to retain their stock.

8. LEONARD RICHARD BURSON, M.B. No. 24, sold ten shares.

(a) *Personal Background:* He was born September 24, 1920, and a Social Workers' Report at the Uintah and Ouray Agency states in part: "As can be ascertained from his long criminal record, Mr. Burson drinks to excess." Attached to this report is a summary indicating that Mr. Burson had 15 convictions for minor criminal offenses during the period of July 21, 1953, through July 1, 1959. He also has four minor children who are full bloods. Burson had about twelve years of schooling but did not graduate from high school. He is a saw-mill worker. Superintendent Zollar took no action relative to placing Mr. Burson under a formal trust or to determine if he

was in need of assistance or otherwise protect him in relation to his stock.

(b) *First Transaction:* On or about November 6, 1963, he sold ten shares of stock to LaVere Labrum for a 1960 Ford automobile and \$3,200 in cash. His stock was offered for sale with the Uintah and Ouray Agency on August 29, 1963, at a price of \$5,000 and no acceptance of the offer was received. The offering was completed November 4, 1963. He executed two documents denominated "Stock Power" at First Security Bank before John B. Gale on November 6, 1963, which indicate that five shares were transferred to Lloyd L. Labrum and Olete M. Labrum, and five shares transferred to Lynn Labrum and Marion Labrum. He was accompanied to the offices of Mr. Gale at the Bank by Lloyd Labrum and Lynn Labrum, who are partners in L & L Motor Company, Roosevelt, Utah. Two documents denominated "Affidavit" of the same date reciting that he received the full advertised price are also in the file, and the court finds from a preponderance of the evidence that he signed them despite his present belief that he did not. On November 8, 1963, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on November 14, 1963, by the bank. Mr. Burson was satisfied with this sale at the time it was made. There is no express evidence to show the value of the car but he believed its value was sufficient with the cash received to make up the \$5,000 or the equivalent for his stock. Gale did not participate in the sales negotiations and received nothing from the transaction except a notary fee.

9. ORAN F. CURRY, M.B. No. 59, sold ten shares.

(a) *Personal Background:* His Social Worker's File at the Uintah and Ouray Agency reads in part: "At this point the family owed \$2,322.23 on a Tribal loan. Three other loans since 1952 have been paid in full. According to the credit report 'Mr. and Mrs. Curry have quite an extensive credit record, much of it is prior to May 1952. They have required and received a great deal of service by the various branches of the Agency.'" After receiving the foregoing information, Superintendent Zollar took no steps to place Mr. Curry under a formal trust or determine if he was in need of assistance or otherwise protect him in relation to his stock.

(b) *First Transaction:* On or about February 14, 1964, he sold one share to one John Chasel and on or about February 19, 1964, he sold one share to one Orin Swain, both of which were sold for approximately \$85, and automobile repairs valued at \$400 at Mr. Swain's and Mr. Chasel's business establishments. An offer to sell covering five shares was filed with the Indian Agency on September 9, 1963, for \$3,500 and no acceptance thereof was received. The offering was completed on November 4, 1963. On or about February 19, 1964, he executed documents before John Gale which were denominated "stock power" and "affidavit," which were notarized and guaranteed by John B. Gale, respectively, which were blank forms at the time he signed them. He made no objection to signing a blank affidavit. The affidavits were later completed so as to recite that he received \$700 cash. A certificate was signed by Superintendent Zollar on February 26, 1964, and submitted to First Security Bank reciting that the law and regulations relative to offering had been complied with. On February 26, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank

that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on March 6, 1964, by the bank. Gale did not participate in the sales negotiations and received nothing but a fifty cent notary fee.

(c) *Second Transaction:* On or about March 24, 1964, he sold three shares to one Clyde R. Murray for approximately \$1,800 cash. This sale was also covered by the offer to sell referred to in relation to the first transaction. On the date of sale, he executed documents denominated "stock power" and "affidavit" before John Gale, reciting that he received \$2,100, which were respectively guaranteed and notarized by Mr. Gale, but which were incomplete forms at the time they were signed by him. A certificate dated March 31, 1964, was signed by Superintendent Zollar and submitted to First Security Bank reciting that the law and regulations relative to the offering had been complied with. On February 26, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on April 2, 1964, by the bank. Except as in these findings indicated, Gale did not participate in the sales negotiations and received nothing but a fifty cent notary fee.

(d) *Third Transaction:* On or about August 18, 1964, he sold two shares of stock to one Dick Bastian for \$300 per share cash. On July 7, 1964, he offered five shares of stock for sale at the price of \$3,000 and no acceptance thereof was re-

ceived. The offering was complete on August 10, 1964. On the date of sale, he executed a document denominated "stock power," signature of which was guaranteed by John B. Gale, and a document denominated "affidavit" which was an incomplete form when he signed it, reciting that he received \$1,200 which was notarized by Irene K. Ruppel. On August 26, 1964, a certificate was signed by Superintendent Zollar and submitted to First Security Bank reciting that the law and regulations relative to the offering had been complied with. On August 31, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on September 10, 1964, by the bank. Except as in these findings indicated Gale did not participate in the sales negotiations.

(e) *Fourth Transaction:* On or about October 23, 1964, he executed in blank the obverse of Ute Distribution Corporation Stock Certificate Number 881 and thereby transferred one share to one Dick Bastian. His signature was guaranteed by Verl Haslem and he received \$300 per share in cash. Except as in these findings indicated Haslem made no representations, did not participate in the sales negotiations and received nothing from the transaction.

(f) *Fifth Transaction:* On or about December 4, 1964, he executed in blank the obverse of Ute Distribution Corporation Stock Certificate Number 972 and thereby transferred one share of stock to Dick Bastian. He received \$300 therefor and his signature was guaranteed by Verl Haslem. Except as in these findings indicated Haslem made no representations,

did not participate in the sales negotiations and received nothing from the transaction.

(g) *Sixth Transaction:* On or about January 4, 1965, he executed in blank the obverse of Ute Distribution Corporation Stock Certificate Number 1023 and thereby transferred one share to Dick Bastian for \$300. His signature was guaranteed by Verl Haslem. Except as in these findings indicated Haslem made no representations, did not participate in the sales negotiations and received nothing from the transaction.

(h) *Additional Facts:* Although Mr. Curry had a number of transactions involving his Ute Distribution Corporation stock, he never actually had physical possession of the stock certificates. When he signed certificates he didn't know whether he read the warning thereon. He formerly had been prominent in tribal affairs. He knew the Ute Distribution Corporation owned minerals, lands and possibly future claim money that he had coming from the government. He understood his stock represented some share of the corporate property in a general way. He was in financial need when he sold his stock. He had received and sold stock in the two land corporations and was acquainted in a general way with the offering and posting requirements and with Public Law 617. [sic:]

10 STEWART EUGENE REED, M.B. Number 361, sold 10 shares.

(a) *Personal Background:* He was born July 21, 1940, and was placed under the Affiliated Ute Indian Trust Agreement by reason of the fact that he was a minor on August 27, 1961. He was released from the trust and the trust terminated with respect to him when he reached twenty-one years of

age, which was prior to the time he sold his stock. He attended high school until his junior year, after which he attended junior college in Carbon County for two semesters. He studied mechanics and body and fender work.

(b) *First Transaction:* On or about October, 1963, he sold five shares to one Clyde R. Murray for an automobile and \$400. Five shares of the stock were offered for sale at the Uintah and Ouray Agency on September 4, 1963, at a price of \$2,500, and no acceptance thereof was received. The offering was completed on November 4, 1963. On the date of sale, he executed two documents denominated "stock power" and "affidavit," respectively, which were guaranteed and notarized by John B. Gale. The Affidavit recited that he received \$2,500. A certificate dated November 8, 1963, was signed by Superintendent Zollar and submitted to First Security Bank reciting that the law and regulations relative to the offering had been complied with. On November 8, 1963, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on November 14, 1963, by the bank. Except in these findings otherwise indicated, Gale and Haslem did not participate in the sales negotiations and received nothing from the transaction. The reasonable value of the automobile is not shown by the evidence except that Reed who had had auto mechanics training believed the car and cash approximated \$2300.

(c) *Second Transaction:* On or about February 21, 1964, he sold five shares to one Wallace A. Davis for an automobile and \$700 in cash. Five shares were offered for sale

at the Uintah and Ouray Agency on November 29, 1964, at a price of \$2,500, and no acceptance thereof was received. The offering was completed on February 6, 1964. On the date of sale, he executed two instruments denominated "stock power" and "affidavit" which were guaranteed and notarized by Verl Haslem and both of which were complete at the time they were signed by him. The affidavit recited that he had received \$2,500. A certificate dated February 26, 1964, was signed by Superintendent Zollar and submitted to First Security Bank reciting that the law and regulations relative to the offer had been complied with. On February 26, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on March 6, 1964, by the bank. Except as in these findings indicated Haslem did not participate in the sales negotiations and received nothing from the sale. There is no evidence that the car and cash received was of a value substantially less than \$2,500.

(d) *Additional Facts:* In relation to the second sale, Mr. Davis wrote a check on the account of Davis Chevrolet Company at First Security Bank of Roosevelt, Utah, dated February 24, 1964, and payable to Stewart E. Reed in the sum of \$2,500. Said check was endorsed by Mr. Reed and deposited to the account of Davis Chevrolet on which it was written. The transaction as represented by the check was sham. In relation to the first transaction, Murray went to First Security Bank in Roosevelt and obtained a check from Mr. Gale payable to Mr. Reed in the amount of \$2,500, which was immediately endorsed and returned to Mr. Gale.

11. RICHARD H. CURRY, SR., M.B. Number 66, sold 10 shares.

(a) *Personal Background:* Mr. Curry was born January 18, 1927. He has six children. His Social Worker's File at the Uintah and Ouray Agency states in part: "We know that Mr. Curry has been rather irresponsible and has been a heavy drinker. . . . Nothing is known about his present employment. Mr. Curry has no cash assets on hand and is not expected to acquire any through sale of property since he has none assigned to him. We know from experience that we can expect no support from Mr. Curry for his children. It was thought that he should be placed under the supervision of the Trustee to conserve any assets which he might acquire for the benefit of the children. . . ." He has six minor children, three of whom (Richard Henry, Jr., Ralph E. and Regina L.) are minor mixed bloods who were placed under the Affiliated Ute Indian Trust. The file also indicates that Mr. Curry had eleven convictions for minor criminal offenses during the period of January 3, 1958, through July 1, 1959. Superintendent Zollar took no action relative to placing Mr. Curry on a trust or otherwise extending special protection to him in relation to his stock. Mr. Curry was once employed by the Duchesne County Sheriff. He is a veteran of World War II and the Korean War, attaining the rank of Sgt. in the armed forces. He is also a high school graduate and is a brother of Reginald Curry, administrative officer for the Ute Indian Tribe.

(b) *First Transaction:* On or about November 6, 1963, he sold five shares to one Clyde R. Murray for \$500 per share. The stock was offered for sale with the Uintah and Ouray Agency on September 13, 1963, at a price of \$3,500 and no acceptance thereof was received. The offering was completed on November 4, 1963. On the date of sale Mr. Curry executed documents denominated "Stock Power" and "Affidavit," the

signature on the Stock Power being guaranteed by Mr. John B. Gale and the Affidavit being notarized by one Jerry Murray, the son of Clyde R. Murray. The Affidavit recited that he had received \$3,500. On November 8, 1962, a certificate was signed by Superintendent Zollar and submitted to First Security Bank reciting that the law and regulations relative to the offering had been complied with. Before he sold this stock he shopped around to see how much he could get. He went to several people from whom he couldn't get more than \$500 per share. On November 8, 1963, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on November 14, 1963, by the bank. Except as in these findings otherwise indicated, Gale did not participate in the sales negotiations and received nothing from the transaction.

(c) *Second Transaction:* On or about September 2, 1964, he signed the obverse of Ute Distribution Corporation Stock Certificate No. 499, thereby transferring three shares to Richard Murray, his signature in this case not being guaranteed by anyone. He received \$350 per share in cash. Five shares of stock had been offered for sale with the Uintah and Ouray Agency on June 9, 1964, at a price of \$3,000, but no acceptance thereof was received. The offering was complete on August 10, 1964. On August 11, 1964, he executed an Assignment of all of the proceeds from his remaining Ute Distribution Corporation stock to Richard Murray, which was marked "paid in full September 6, 1964 Richard Murray." He signed his stock certificate after August 27, 1964, and the

stock was actually transferred by the Bank on September 10, 1964.

(d) *Third Transaction:* On or about September 14, 1964, he signed, in blank, the obverse of Ute Distribution Corporation Stock Certificate Number 896 thereby transferring his remaining two shares to one Gordon E. Harmston and Clara Mae Harmston with the signature guaranteed by Mr. John B. Gale. He had opportunity to read the warning on the certificate. He received \$400 per share therefor in cash. These shares were also covered by the offer to sell referred to in relation to sale number two. The sale was after August 27, 1964. Except as in these findings otherwise indicated, Gale and Maslem had nothing to do with the sales transaction.

(e) *Additional Facts:* He does not recall whether he saw the front of the certificate. The evidence does not disclose whether he read the warning or not. Mrs. Logan noted the relationship between the transferee and notary in relation to the first sale, when the documents arrived at the Indian Agency Office.

12. CHARLES T. REED, M.B. Number 353, sold 10 shares.

(a) *Personal Background:* His Social Worker's File with the Uintah and Ouray Agency states in part: "Several years ago Mr. Reed was employed by the Bureau Branch of Law and Order. He was discharged because of his drinking. . . . In view of the family history, we believe that Mr. Reed should be placed under the supervision of a Trustee." The file also shows that on April 14, 1960, the Superintendent determined that Mr. Reed was in need of assistance in managing his affairs and was therefore placed under the Affiliated Ute Indian Trust administered by the Bank.

(b) *First Transaction:* On or about October 5, 1964, Mr. Reed signed, in blank, the obverse of Ute Distribution Corporation Stock Certificate No. 353 and sold the same to Mr. Richard Murray. The sale was transacted in Murray's garage at Roosevelt, Utah, and afterwards, his signature was guaranteed by John B. Gale. After the stock certificate was executed by him, the name of "The Benjamin T. Shaw Trust" of Dixon, Illinois, was inserted as the transferee. Reed does not know Shaw nor was he advised that his stock was being purchased for resale or the price at which it was to be resold. Mr. Reed received a 1947 Ford, a 1950 Buick and \$300 in cash.

(c) *Additional Facts:* On September 17, 1964, the trust committee, consisting of seven bank officers, released Mr. Reed from the Affiliated Ute Indian Trust more than a year after he had requested that he be so released. An attorney employed by him wrote the Bank requesting his release from the trust and the release of his stock. First Security Bank did not conduct an investigation beyond a consideration of material submitted in support of Reed's request, including affidavits from Reed's employer and from the President of Ute Distribution Corporation attesting his competence. The purchase of his stock was consummated by Richard Murray October 5, 1964. In January, 1964, he had agreed to sell the stock to Murray who advanced him \$40, but the stock was not actually transferred until October after the trust was terminated as to him. When he initially made his deal with Murray, he understood that he was only selling five shares, but when he endorsed the certificate it included ten shares and Reed thereafter attempted to protest to Murray who would not listen to him. The agreement between the parties was that Reed would receive, and he did receive, a Ford, a Buick and \$300 for five shares. There is no express evidence as to the value of the cars but the preponderance of the circumstantial

evidence indicates that their value could not have been as much as \$2,000. Gale guaranteed the signature in this transaction. Gale did not participate in the sales negotiations except as in the findings of fact found generally.

13. Unless otherwise expressly noted hereinabove, John B. Gale and Verl Haslem, in their indicated actions in carrying out, or in connection with, the sales described hereinabove,

(a) Were acting within the apparent scope of their employment and authority for First Security Bank; that while they had not been expressly directed or authorized by the Bank to purchase, or to participate in the purchase of said stock, they were authorized by the bank to collect notary public fees for the bank in connection with such transactions, to facilitate the transfer of said stock in aid of customers of the bank in acquiring said stock and to maintain deposits in said bank for the mutual benefit of the bank as a depository and of the customers as prospective purchasers to facilitate such acquisitions; to acquire for their own accounts or for customers said stock in recognition of their prestige as employees of the bank and through the utilization of bank facilities and with the knowledge that the owners would be likely to have confidence in negotiations participated in by bank employees under such circumstances; and the court finds that the bank had knowledge and notice of the activities of Gale and Haslem for their own benefit and for the benefit of others in the acquisition of said stock, and in its own supposed interest as well as in their interest continued to acquiesce in and to ratify such activities; and that the private directions to said employees from other agents of the bank that these activities should be conducted "on their own time" did not reasonably serve to alter the apparent authority established by the bank under the circumstances. The court further finds in this connection that by the bank's conduct, and through the use by

Gale and Haslem of bank facilities, it unavoidably led the plaintiffs to reasonably believe that it consented to and approved the conduct of its employees and placed said employees into a position more effectually to acquire, or to facilitate the acquisition by others, of said stock;

(b) Utilized secretaries, stationery, postage and other facilities of First Security Bank;

(c) Received, for and on behalf of First Security Bank, consideration for notarized "Affidavits" utilized in transferring plaintiffs' stock;

(d) Never inquired into the truthfulness, completeness or accuracy of each of the statements in said documents;

(e) Never administered an oath or affirmation when guaranteeing signatures or notarizing documents denominated "Affidavit," to which the said plaintiffs were signers;

(f) Never attempted in any manner to dissuade or discourage the sale or transfer of any Ute Distribution Corporation stock by any of the plaintiffs; and

(g) Never advised of any funds or deposits with or held by First Security Bank at its Roosevelt Office of Bernice Vannoy, Tillie Gyllstrom, Neal Phelps, The Carpenters, The Shaw Trust and others for purposes of acquiring Ute Distribution Corporation stock, or the price they, or either of them, had been authorized to pay for said stock, or that they were engaged in the purchase of Ute Distribution Corporation stock as agents for others or for resale or the price at which stock was being resold by them.

14. None of the designated plaintiffs ever had physical possession of or read the Ute Distribution Corporation stock certificates issued in their names, nor were the legends on the said stock certificates ever communicated to them.

15. Unless otherwise expressly noted hereinabove, none of the designated plaintiffs ever saw or signed any of the Ute Distribution Corporation stock certificates issued in their name.

16. Neither the Bureau of Indian Affairs, the Uintah and Ouray Agency, nor any agent or employee of said Bureau or Agency ever attempted in any way to verify the truthfulness or accuracy of the "Affidavits" presented to said Bureau and Agency, nor to ascertain the circumstances or conditions surrounding the execution of said "Affidavits" or the consideration being paid or given for the related stock transfers.

17. Each of said "Affidavits" recited that the mixed blood affiant had received in cash the price for his Ute Distribution Corporation stock for which it had been posted by the Bureau of Indian Affairs which, except as otherwise expressly noted hereinabove, was not true and was, unless otherwise expressly noted hereunder, known to the named notary to be untrue.

18. At all pertinent times, Messrs. Richard Murray, Clyde R. Murray, Earl Dillman, Richard Bastian, Lloyd Labrum and Wallace Davis were engaged in the business of selling new or used cars in the Uintah Basin Area of Utah, a fact at all pertinent times well known to Messrs. Gale, Haslem and Adelyn H. Logan, Realty Officer, Uintah and Ouray Agency, Bureau of Indian Affairs.

19. Unless otherwise expressly noted hereinabove, none of the designated plaintiffs ever read the statements printed as legends on the stock certificates either on the certificate or any other document, nor did any officer, agent, or employee of First Security Bank, including defendants Gale and Haslem, undertake to explain to plaintiffs at the time of sale or any other time, the true nature of their stock or its probable value, or to discourage its sale.

PART III GENERAL FINDINGS

A. *Relating to Plaintiffs' Claims Against The United States of America.*

1. No employee or agent of the United States or any person or organization acting pursuant to the authorization of the United States ever undertook or performed any appraisal or evaluation of the mineral assets of the Ute Indian Tribe, of the Uintah and Ouray Reservation, Utah.

2. The Manual of the Bureau of Indian Affairs, as in use in 1963 and 1964, a copy of which said Manual was at all times retained at the Uintah and Ouray Agency, Bureau of Indian Affairs, Ft. Duchesne, Utah, contained express provisions to be followed in appraising Indian lands. (Only one small section pertains to appraisals of mineral values, and is limited to cases when total value of land is being appraised. The Plan for Distribution, Exhibit U-A, specifically exempts appraisal of mineral rights in connection with the division of Tribal assets where land values are involved.)

3. At some time after the sales of Ute Distribution Corporation stock commenced, Mr. R. O. Curry, Director of Resources for the Ute Indian Tribe, requested that the geological survey of the United States make funds available for the purpose of appraising the assets which were jointly administered by Ute Distribution Corporation and the Ute Indian Tribe. In response to said request, Mr. Curry was informally advised that such appraisal would not be made because it would be costly and the United States did not desire to divert the personnel from other projects.

4. On October 15, 1964, the Bureau of Indian Affairs' Area Director requested that the Superintendent of the Uintah

and Ouray Agency give his observations as to the value of the shares sold. In response to this request, within the short space of eight days, the Superintendent reported the following facts:

(a) That Ute Distribution Corporation had received its share of all oil and gas revenues of approximately \$2,245,300 from Tribal lands or about \$610,000 from that source which, had it all been distributed to its members, would have amounted to \$1,245 each for the three years involved. (This information covered a period of over three years, during which some eight per capita payments were distributed to stockholders. The information must have been known to that degree.)

(b) That because of the Tribe's rejection of bids at three recent oil and gas sales, against the recommendation of the oil and gas supervisor and himself, that immediate revenue in the amount of \$442,760 had not materialized but that bids accepted in two recent sales would mean an immediate income of \$641,645 upon approval of the leases;

(c) That there were approximately 185,000 acres out of a total of 1,236,000 acres out of which minerals were owned that would be under lease for oil and gas by the end of 1964, and that annual rental from that source would total over \$231,000.

(d) That there was one unliquidated claim against the United States of approximately \$8,000,000 as to which Ute Distribution Corporation would receive its share and that there were three remaining small claims not finally adjudicated which might total about \$1,750,000 when finally settled.

None of such information as far as the record discloses was communicated to the designated plaintiffs by the Superintendent.

5. No appraisal of the mineral estate of the Uintah and Ouray Indian Reservation was ever undertaken by the Bureau of Indian Affairs for the reason, according to Mrs. Logan, Realty Officer of the Uintah and Ouray Agency, that such an appraisal would be much more difficult than the prior appraisals of the surface estates conveyed to Antelope Sheep Range Company and Rock Creek Cattle Range Company by the Bureau of Indian Affairs.

6. In 1958 the Bureau of Indian Affairs, acting in cooperation with the Ute Indian Tribe, did undertake the appraisal of the assets represented by the capital stock of the two related corporations, Rock Creek Cattle Range Company and the Antelope Sheep Range Company, in connection with the division of assets between the Tribe and the mixed-bloods. Subsequent to said appraisal over 90 per cent of the members of the "mixed-blood" group, including all of the plaintiffs herein, sold their stock in said Corporations to the Ute Indian Tribe prior to August 27, 1961, which capital stock was purchased in all instances by the Ute Indian Tribe for \$550 per share. The primary purpose of the appraisals on the two land corporations was to carry out the division of assets found in Public Law 671. These surface appraisals were later used by the Tribe in determining what they should pay for the range stocks. The appraisals were not made for the purposes of fixing the value of the stock at the time of its sale to the Tribe.

7. At all times pertinent to the claims of the plaintiffs herein, the Bureau of Indian Affairs was aware of the fact that Ute Distribution Corporation stock was of substantial value, and that tribal claims of substantial value were in the process of compromise and that oil, gas and other useful minerals were known to exist on the Uintah and Ouray Reservation and the Bureau so advised Congress during the Summer of 1961. The Bureau of Indian Affairs did not, however, undertake particu-

larly to advise the designated plaintiffs of those facts except as hereinabove found.

8. As to each sale of plaintiffs' stock, defendant United States of America, performed the following steps prior to August 27, 1964:

(a) Received an "Offer to Sell" which was prepared and signed by the mixed-blood Indian on forms supplied by the Superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs. The "Offer to Sell" specified a sum in cash which would be accepted for the mixed-blood Indian's Ute Distribution Corporation stock.

(b) Posted said "Offer to Sell" at various public places in Uintah and Duchesne Counties, Utah.

(c) Advised the mixed-blood Indians that no offer to purchase had been received pursuant to the terms of the "Offer to Sell" and that said stock could be sold within a period of six months thereafter to any person at the same or greater price and on the same terms and conditions upon which it had been offered.

(d) Received signed documents denominated "stock power" and "affidavit" respectively, both of which were executed by the mixed-blood Indian and were delivered to the Agency on occasions by a non-Indian, and came in the mail on other occasions.

(e) Executed a "Certificate" to the effect that the shares had been properly offered at a price specified in the certificate to members of the Ute Indian Tribe in accordance with the law and regulations, which said Certificate was transmitted directly to defendant First Security Bank of Utah, N.A., and never furnished to the purchaser directly or stamped on the stock certificate, and which said Certificate was pre-

pared by Adelyn H. Logan, Realty Officer, and executed by the Superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs, Ft. Duchesne, Utah.

(f) By letter on the letterhead of the Uintah and Ouray Agency, advised First Security Bank that an affidavit had been signed by each of the sellers and was on file in the office, which said letter was prepared by Adelyn H. Logan, Realty Officer and executed by the Superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs.

9. None of the Offers to Sell filed by or on behalf of the "mixed-blood" stockholders of Ute Distribution Corporation ever specified any consideration except cash. Each of the Affidavits signed by the 12 designated plaintiffs indicated that cash had been received for the stock.

10. Although the Articles of Incorporation of Ute Distribution Corporation, which had been approved by the Secretary of the Interior as aforesaid, expressly provided in Article VIII that unless the endorsement of the Superintendent of the Uintah and Ouray Agency be endorsed on the stock certificate, the transfer would be invalid, and the stock certificate bore express warnings and notice of restrictions on transferrability thereon, a substitution to this requirement was made upon agreement between the Bank and the Government. It was agreed that a separate certificate would be prepared and mailed to the Bank, rather than the requirement of the endorsement on the back of the certificate itself by the Superintendent. This was done to expedite the procedure and for the convenience of the Bank. The Superintendent's certificate was subsequently attached to the stock certificate by the Bank.

11. In no instance did the Superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs, Ft. Duchesne, Utah, actually certify on the actual stock certificate that the

laws and regulations had been complied with, nor was any "mixed-blood" Indian stockholder, in selling his Ute Distribution Corporation stock, ever permitted, prior to August 27, 1964, to examine or read his Ute Distribution Corporation certificates and the legends thereon or to endorse his signature on the assignment form printed thereon.

12. Mr. M. M. Zollar, Superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs, Ft. Duchesne, Utah, was advised by the Area Office of the Bureau of Indian Affairs on July 18, 1963, that "the law requires that the shares be advertised so that the Ute Tribe may have an opportunity to purchase them if they wish. It is felt that sales of stock should be advertised once every three months so that we will comply with the law and also offer a service to the people wishing to sell their shares. This will be a burden on the staff, but we should offer every opportunity for the people owning the shares to secure the best price possible and still fit the advertising in with our workload."

13. The United States Department of the Interior advised Congress on October 13, 1961, and in the various reports of the Commissioner of Indian Affairs, that "a mixed-blood Ute can sell his stock in the Ute Distribution Corporation if he wishes to do so, and the pending Bill [amendment to 25 U.S.C. § 677] will make no change in the law in that respect. The mixed-bloods have been pretty well convinced, however, by an educational campaign that they should not sell their stock because it represents their undivided interest in the minerals and claims, the value of which is uncertain. Valuable minerals are known to exist, but their value could fluctuate over a wide range." The Bureau of Indian Affairs undertook no educational campaign among the mixed-bloods to discourage the sale of their stock but was aware of intermittent efforts by others with this in view.

14. A meeting of the Board of Directors of Ute Distribution Corporation was held at Fort Duchesne, Utah, on September 10, 1963, and was attended by Bert Narcho, Acting Superintendent, Uintah and Ouray Agency, Bureau of Indian Affairs, and Adelyn H. Logan, Realty Officer of the Agency. At said meeting, it was suggested since many of the stockholders lived off the Reservation and knew nothing about the Offers to Sell, that individual notice to each concerning Offers to Sell should be sent to enable them to purchase the offered stock. Mrs. Logan stated that the duty of the United States was only to notify the Corporation of proposed sales and that maybe the Board of Directors should do this, because the Government did not have the funds available to set up a clerk's job to do this work as it would take a full-time job to handle this work. Discussion was had on the efforts of the Board to obtain an "open end" loan from First Security Bank to purchase Ute Distribution Corporation shares being offered for sale. Mrs. Logan informed the Board that a major oil company had contacted her and asked for information on how to buy Ute Distribution Corporation stock being offered for sale. She informed them that the advertisements on Offers to Sell were to members of the Tribe only. At said meeting the Board was told that Offers to Sell were to be put in conspicuous places, viz., the U.S. Post Offices in Myton, Randlett, Fort Duchesne, Whiterocks and Duchesne.

Discussion was had on second-hand cars, old models, or any other consideration except cash not being acceptable. The Board was told that the selling stockholder must furnish the Superintendent a signed affidavit certifying that he has received the full amount as offered. Discussion was had on the sale of one Elizabeth Bumgarner who sold her ten shares to Dick E. Bastian of Roosevelt, Utah, who furnished the Superintendent an affidavit that she had received \$5,000, said affidavit notarized by one Earl Dillman. At said time,

Mrs. Logan knew Messrs. Bastian and Dillman had interests in a car business in Roosevelt. Mrs. Logan informed the Directors that she had 29 correct Offer to Sell applications signed and ready to be advertised and she estimated that she would have 40 offers by the first of October and that it would take \$99,000 to purchase all of the offered shares.

15. In 1963 and 1964, it was common knowledge in the Uintah Basis area of Utah, including the towns of Roosevelt, Duchesne and Ft. Duchesne, that the "mixed-bloods" were accepting used cars for their Ute Distribution Corporation stock.

16. Mrs. Adelyn H. Logan, Realty Officer and Mr. M. M. Zollar, Superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs, knew during the late summer and fall of 1963 that "mixed-blood" Indians were receiving automobiles or other chattels in exchange for their stock rather than the cash consideration stipulated in the "Offer to Sell."

17. Mrs. Adelyn H. Logan, the Realty Officer of the Uintah and Ouray Agency, Bureau of Indian Affairs, Ft. Duchesne, Utah, who was the government official charged with responsibility for the examination of said affidavits, among other things, noted various irregularities, or "bad business practices" appearing on the face of many of the affidavits but pursuant to instructions from Superintendent Zollar, did nothing beyond noting such irregularities and checking the affidavits to see if they were complete and to see if the amount stated therein by the mixed-blood seller was equal to or more than the amount of his original offer to sell. If so the affidavits were accepted at their face value without further effort being made to determine the regularity of the reported sales. Such defects included the following: erasures, documents notarized by the transferee or a member of his immediate family, names

on the notary seal which differed from the name of the purported notary, operative words of the affidavit including the amount of consideration in different handwriting or different colors of ink appearing to have been added after the document had been signed, and other similar irregularities.

18. The knowledge of the United States concerning irregularities in sales procedure is further evident in a Memorandum dated April 23, 1965, prepared by Adelyn H. Logan, Realty Officer of the Uintah and Ouray Indian Agency, in which she advised the Superintendent that "in our involvement with our offering 970 shares for 129 members and the furnishing of certificates to the First Security Bank of Utah for the 808 shares sold to non-members prior to August 27, 1964, we could not help but note several irregularities, indicating that an advantage was being taken of some of the sellers. Since, however, the seller furnished us with an affidavit or certified statement to the effect that he had received from the named non-Indian buyer the price he had asked, we did not feel it our responsibility to pursue the matter further." Mrs. Logan further indicated in said Memorandum that, "whether there is a responsibility on the part of the Bureau, now, to present evidence that it has which might be of assistance to the plaintiffs in the case is a matter to be decided. From the standpoint that we are perhaps quite aware of numerous instances in past years where the Indian people and their interest have been exploited by non-Indians, even though in this case the mixed-blood plaintiffs were actually terminated of Bureau supervision and jurisdiction on August 27, 1961, perhaps there is an obligation to become involved." Mrs. Logan was referring to the request by plaintiffs' attorney for assistance in prosecuting their claims against the first defendants named in this action. This was prior to the time the United States was joined as a party.

19. As early as March 19, 1963, the United States Department of the Interior received correspondence from Congressman Samuel M. Friedel, writing on behalf of a "mixed-blood" and complaining that there were certain irregularities in relation to the sale of Ute Distribution Corporation stock. On August 26, 1963, the United States Department of the Interior received a letter from Senator Frank E. Moss of Utah concerning the sales procedure, after both Senators Moss and Bennett of Utah were presented with complaints by an Indian relative to these matters.

20. On November 6, 1963, the Superintendent of the Uintah and Ouray Agency and Mrs. Logan received and read a letter from one R. O. Curry, Director of Resources of the Ute Indian Tribe. The letter read in part:

"I understand that the regulations pertaining to the sale of these [i.e., Ute Distribution Corporation] stock after they have once been offered to the Tribe and members of the Tribe is that they can be sold to any person desiring to purchase them but at not less than the price offered and this is the part that concerns me most. I understand that some of the people have agreed to take automobiles as part payment on the stock. It would seem that the acceptance of an automobile would not be fulfilling the requirements of receiving as much as the shares are offered for. For instance with the receipt of an automobile which costs the dealer \$2,000, and his markup of at least \$1,000 or \$1,100—the seller of the shares would receive approximately \$4,000 in value instead of \$5,000 if he had offered for \$5,000. I was wondering if the regulations could be construed to require the seller to receive only cash instead of equipment and chattels as they may pass hands in some instances. I wondered if this might be discussed with our attorney or your Field Solicitor to see if the receipt of chattels is a violation of the sale agreement as I am sure that some of the sellers may be taken advantage

of by automobile salesmen who are anxious to obtain some of these shares of stock and at the same time effect the sale of an automobile."

Neither the Superintendent nor the Realty Officer ever answered or otherwise responded to this letter until upon a telephone call from Mr. Curry, Mrs. Logan gave him the substance of the note next following: Mrs. Logan wrote in the margin of the letter:

"Note for Files. This memo was discussed with Mr. Z. [Superintendent Zollar], but he did not think the points raised should be a further concern of ours since the members have been terminated; the stock is unrestricted, and they are therefore free to do whatever they wish as long as the Bureau complies with CFR 243 which we still do til 8-27-64."

21. On November 5, 1963, when he received the aforesaid letter from Mr. R. O. Curry, Superintendent Zollar, acting for the Secretary of the Interior, adopted the position that he would not interfere with the sale because he had no responsibility to do so after August 27, 1961.

22. The immediate determination as to whether the individual "mixed-blood" was competent to manage his own affairs and whether the individual "mixed-blood" should be placed under the express provisions of the Affiliated Ute Indian Trust Agreement was made by the Superintendent of the Uintah and Ouray Reservation.

23. On November 7, 1963, Mr. R. O. Curry, Director of Resources for the Ute Indian Tribe, addressed a form letter to all persons who had, at that time, offered their stock for sale, in which he pointed out that "a sale for cash is much more desirable than accepting equipment or an automobile on

the purchase Price" and that if the stockholder had not already committed his stock to someone, "it might be to your advantage to wait until after the 12th of November to see what the Tribe might have in mind." Thereafter, the Tribe did not purchase any shares of stock at all. No decision was made on this question because the members of the Business Committee were not in agreement as to whether the stock should be purchased or not. The Tribe did not know how much the stock was worth and had no money in their budget at that particular time for the purchase of the stock. The Tribal Business Committee did know that there were unadjudicated claims against the Government and that there was oil and gas on the Reservation. They also knew that there was asphalt, gilsonite and coal on the Reservation. In the absence of any appraisal, the significance of this knowledge was minimized, but the Business Committee knew that the stock was of substantial value.

24. Plaintiffs originally brought this action against the bank, Gale, Haslem and other individuals on February 17, 1965. After various proceedings were had, the complaint was amended by a Second Amended Complaint on February 11, 1966, on which latter date the United States of America for the first time was made a party defendant. The United States did not fraudulently or otherwise conceal or secrete from the plaintiffs the existence of any cause of action or claim against the United States, and the running of the statute of limitations in favor of the United States was not thereby tolled. The designated plaintiffs did not in fact realize, discover or believe that they had a claim against the United States until within two years of the joinder of the United States as a defendant in this action. The named plaintiffs were in need of counsel, advice and assistance looking to the retention of their stock interests which the United States

through its Bureau of Indian Affairs was peculiarly in a position to extend within the limitations established by law and regulations.

25. Prior to the adoption of Public Law 671 and the organization of the Ute Distribution Corporation, the Bureau of Indian Affairs was aware that in the past the Ute Indians had been sold useless or inappropriate chattels including, in particular, automobiles which were overvalued or not necessary or appropriate for the purposes of the buyers.

26. Prior to the adoption of Public Law 671, the Bureau of Indian Affairs was aware that an appraisal of the mineral assets of the Ute Indian Tribe would be desirable in order to protect the interests of the mixed-blood Ute Indian with respect thereto and in connection with the evaluation and sale of their Ute Distribution stock. Representatives of the Bureau, at hearings at Fort Duchesne, Utah, prior to the adoption of Public Law 671, inferred to the members of the Tribe, that such an appraisal would thereafter be undertaken.

B. Relating to Plaintiff's Claims Against First Security Bank, John B. Gale and Verl Haslem.

1. At all times pertinent to the claims of defendants herein, Mr. Ralph D. Cowan was vice president and trust officer of First Security Bank of Utah, N.A. Mr. C. Tab George was assistant trust officer of First Security Bank of Utah from August, 1963, to March 14, 1964. At all material times, Mr. George W. Bateman was a vice president of First Security Bank.

2. At all times pertinent to the claims of plaintiffs herein, defendant John B. Gale was (a) an elected Justice of the

Peace; (b) handled most notarizations of affidavits and guaranteed most of the signatures on the stock powers and certificates. He guaranteed the signatures as an agent of First Security. Most of the stock transfer functions were handled by bank personnel located in the trust office in Salt Lake City; (c) was authorized by the bank to extend loans up to \$500 without the approval of any other bank officer, and was in charge of the Timeway Loan Department of the Roosevelt Branch; (d) was authorized by the bank to issue and execute cashier's checks on the bank up to \$2,500 without prior approval of any other bank officer; (e) was authorized by the bank to notarize documents and to charge and collect for the bank fees for said service; (f) had full access to all loan records of any of the plaintiffs having loans with the bank and to any financial records maintained by the bank in connection therewith; (g) had full access to duplicate transfer records of Ute Distribution Corporation which contained the name of the transferor, dates of transfer, number of shares transferred, name and address of transferee, and the number of shares, if any, retained by the transferee.

3. At all times pertinent to the claims of plaintiffs herein, defendant Verl Haslem was (a) authorized by the Bank to notarize documents and to charge and collect for the bank fees for said service; (b) had full access to available financial records and loan records of any of the plaintiffs having loans with the bank; (c) had full access to duplicate transfer records of Ute Distribution Corporation which contained the name of the transferor, date of transfer, the number of shares transferred, the name and address of the transferee, and the number of shares, if any, retained by the transferor.

4. At all times pertinent to plaintiffs' claims, defendant First Security Bank of Utah, N.A.; had in its possession copies of the Articles of Incorporation of Ute Distribution Corpora-

tion, the Regulations promulgated by the Secretary of the Interior relating to Ute Distribution Corporation and the stock certificates of Ute Distribution Corporation owned by the mixed blood Ute Indian stockholders, and by virtue of such possession, and the execution of the aforesaid business agent agreement and trust agreement, was chargeable with notice of the contents of the said Articles of Incorporation and charged with responsibility.

5. First Security Bank assumed the duty of a transfer agent in connection with all Ute Distribution Corporation stock transfers. It represented to the Executive Director of the Affiliated Ute Citizens ("mixed-bloods"), that upon execution of the stock transfer agreement; "it would be our [i.e., the bank's] duty to see that these transfers were properly made." It was further represented that the Roosevelt Office of the Bank would perform a function in relation to the presentation of certificates for transfer and in relation to the stockholder who did not live in the area of Roosevelt, and that "the Corporation would not be involved in this, as the Bank would be acting for the individual stockholders."

6. After delivery to First Security Bank of the Ute Distribution Corporation stock certificates, execution of the business agent and trust agreements and receipt of a certain letter from attorney John S. Boyden for and on behalf of the Ute Distribution Corporation, discussed hereinunder, the Bank indicated that it considered that it held the certificates belonging to the beneficiaries of the trust pursuant to Article V of the Trust Agreement; but there was no agreement, understanding or indication that the bank held pursuant to and bound by said trust agreement the certificates of others not specifically designated as beneficiaries under said Trust Agreement.

7. Three additional "mixed-bloods" were added to "Schedule A" to the Trust Agreement of July 26, 1960, as named beneficiaries and bound by the provisions thereof, by letter from the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs from time to time after execution of the said Agreement. Only one of the designated plaintiffs, Charles T. Reed, was added, then removed, before his stock was transferred.

8. Mr. John S. Boyden, as attorney for Ute Distribution Corporation, on July 22, 1959, advised First Security Bank, as follows:

(a) That the Ute Distribution Corporation had adopted the following resolution: "The Board of directors by unanimous vote direct their attorney, John S. Boyden, to write a letter to the First Security Bank of Utah, N.A., asking said Bank, as transfer agent, to discourage the sale of stock of the Ute Distribution Corporation by any of its stockholders and to emphasize and stress to the said stockholders the importance of retaining said stock."

(b) That the Bank was to "impress upon anyone desiring to make a transfer that there is no possible way of determining the true value of this stock," and that such stock "represents their distributive share" of the mineral interests in the reservation and the proceeds of judgments against the United States.

(c) That the Bank was to discourage the mortgaging, pledging or in any way jeopardizing the ownership of Ute Distribution Corporation stock because such practices "may result in very unfair practices."

9. In said letter dated July 22, 1959, attorney John S. Boyden further instructed First Security Bank that the stock

of Ute Distribution Corporation was not to be delivered to its stockholders, but was to be retained by First Security Bank. This procedure was to be followed, according to Mr. Boyden, because of some rather unfavorable experiences which the Indian service had had with the loss by Indians of valuable instruments.

10. Trust officers of First Security Bank at its Main Office in Salt Lake City, Utah, received the said letter from Mr. Boyden and gave no notice to him or to the tribe that it would not follow the advice therein given. No stock was sold by plaintiffs until several years after the Boyden letter. The Bank did in fact retain possession of the stock certificates pursuant to Mr. Boyden's advice.

11. Prior to actual drafting of the Trust Agreement, the trust business arising from Public Law 671 was actively solicited by the president of First Security Corporation, who indicated the Bank's strong desire to obtain it for commercial reasons, and by the vice president of the Bank who wrote to Mr. A. H. Harris, Executive Director of the Affiliated Ute Citizens, on January 16, 1958, and represented that First Security Bank would act as "trustee for trusts established by individuals who are not minors or incompetents."

12. Prior to August 27, 1967, no First Security Bank agent consummated the transfer of any designated plaintiffs' stock until he had signed an "affidavit" declaring that he had received the advertised value for the stock. The letter of September 23, 1963, from the Bank's trust officer Cowan inaugurated this "affidavit" system:

"In the event the offer to sell is not accepted by a member of the tribe within the time permitted by the regulations, then it would appear the following procedure should be followed:

"1. The stockholder offering this stock for sale will be notified by the Agency that his offer has not been accepted by a member of the Tribe and that he is free to sell his stock at a price not less than that indicated in his offer to sell.

"2. When he has found a buyer he will furnish the Superintendent with evidence satisfactory to the Superintendent that a sale has been made at a price not less than that indicated in the offer to sell, and will deposit with the Superintendent a stock power assigning the shares sold to the purchaser."

The "affidavit" was adopted to be the "evidence satisfactory to the superintendent."

13. By an agreement made and entered into July 26, 1960, entitled "Affiliated Ute Indian Trust Agreement" First Security Bank became a Trustee as to certain named "mixed-bloods" who were either minors or determined by the United States to be non compos mentis or in need of assistance in managing their affairs including in particular, Stewart Eugene Reed, who was a minor and Charles T. Reed, who was determined to be in need of assistance, and both of whom are designated plaintiffs herein. Neither of those plaintiffs was under the trust at the time he sold his stock. Stewart Eugene had become an adult and the trust had by its terms automatically terminated as to him. Charles T. was released from the trust by the trust committee, and such action was not shown to have been arbitrary or capricious. The Bank trust committee, by the terms of the contract had the power to terminate it as to any adult beneficiary.

14. On or about February 13, 1964, Mr. Gale was informed by the President of Ute Distribution Corporation that no more certificates would be signed until the selling stock-

holder had received his money as advertised. On or about said date, Mr. Gale informed the President of Ute Distribution Corporation that the procedure being followed by First Security Bank required the buyer of Ute Distribution Corporation stock to deposit with the Bank the full purchase price which the Bank paid over to the seller when the stock certificates are signed. This statement by Mr. Gale to the President of Ute Distribution Corporation was not true. /

15. In correspondence between the Salt Lake City branch of First Security Bank and its Roosevelt office, prior to August 27, 1964, First Security Bank required that all Ute Distribution Corporation stock certificates reissued in the name of a "mixed-blood" be returned to the Main Office of the Bank and retained in its files until August 27, 1964, whereas stock certificates issued or reissued to non-"mixed-bloods" were delivered to the stockholder.

16. First Security Bank took the position, at all times prior to August 27, 1964, that it was entitled to keep and retain the Ute Distribution Corporation stock certificate owned by all of the "mixed-bloods" and did so until they were transferred or until after August 27, 1964. The proof is insufficient to show that this in and of itself was the direct cause of damage in any particular case and the evidence indicates that the retention system was established in good faith for convenience and in the supposed interest of the Indians; but it did minimize the dissemination of warnings against the disposal of stock and encourage acquisitions of stock from half-bloods without the warnings being impressed upon them.

17. Ute Distribution Corporation was interested in purchasing and attempted to purchase its shares of stock which had been offered for sale. A meeting of the Board of Directors of Ute Distribution Corporation was held at Salt Lake City,

Utah, on September 6, 1963, and was attended by Messrs. Cowan, George and Bateman. The purpose of the meeting was to discuss a group loan to enable the purchase of Ute Distribution Corporation stock shares being posted for sale. Discussion on such a loan was held. The Bank representatives advised that Ute Distribution Corporation stock certificates would not be deemed sufficient collateral for such a loan. Such a loan was never made by First Security Bank. It was agreed that the Ute Distribution Corporation stock certificates of all "mixed-blood" members were to be retained by the First Security Bank until August 27, 1964.

18. First Security Bank prescribed the manner in which the stock powers were to be executed in a letter to Superintendent Zollar dated October 19, 1960, and specifically authorized the execution of stock powers and the acceptance of such powers by the United States prior to the time when the identity of the transferee was known, but no transfer was made until the affidavit disclosed the consideration the Indian claimed he had received.

19. A meeting of the Board of Directors of Ute Distribution Corporation was held at Salt Lake City, Utah, on November 14, 1963, and was attended by Mr. Cowan. It was determined at the said meeting the responsibility for determining that the affidavits being signed by the "mixed-blood" members relating to their Ute Distribution Corporation stock was upon the Superintendent. Discussion was had on the sale by "mixed-blood" members of their Ute Distribution Corporation stock for used cars. The assignment of the Ute Distribution Corporation stock of Leonard Richard Burson to First Security Bank for a loan was discussed.

20. A meeting for the Board of Directors of Ute Distribution Corporation was held at Salt Lake City, Utah, on

February 7, 1964, and was attended by Mr. Anderson and Mr. Tab George, officials of First Security Bank in Salt Lake City. Discussion was had on the subject of Mrs. Anita Reyos having signed an affidavit in blank that she had received cash for her Ute Distribution Corporation stock, that she had not received said cash and her statement that said affidavit had been signed by her on December 23, 1963, but had been notarized November 11, 1963, and that the check had been made payable to Dick Bastian and the Bank.

21. A meeting of the Board of Directors of Ute Distribution Corporation was held at Salt Lake City, Utah, on April 25, 1964, and was attended by Mr. Cowan and Mr. Leon Olsen, a trust officer of First Security Bank. A letter of one Samuel W. Bumgarner was read. Said letter made complaint about the sale by Mr. Bumgarner to one Earl Dillman of his Ute Distribution Corporation stock that Mr. Bumgarner had not received the balance owed him on his stock.

22. The Bank prescribed the manner in which the stock powers were to be executed in a letter to Superintendent Zollar dated October 19, 1960, and specifically authorized the execution of stock powers and the acceptance of such powers by the United States prior to the time when the identity of the transferee was known and when the exact amount of consideration was as yet undetermined, but no transfer was completed until an affidavit was furnished specifying a consideration.

23. The Bank established the procedure to be followed in all sales of Ute Distribution stock in a letter dated September 23, 1963, copies of which were submitted to Superintendent Zollar. Significant portions of these instructions include the following:

(a) It was provided that if a member of the Tribe determined to make a purchase pursuant to the offer to sell, he

must make a deposit of at least 10 per cent of the purchase price and pay the balance within 30 days and that such payments were to be made through the Indian Agency.

(b) It was provided that a "stock power" in a form which was supplied by the Bank should be executed in lieu of the endorsement of the stock certificate.

(c) Reissued stock certificates were to be forwarded to the Roosevelt office of the First Security Bank for final execution.

(d) In the event a member of the Tribe did not determine to purchase, it was stipulated that after the selling stockholder had found a buyer, he would "furnish the Superintendent with evidence satisfactory to the Superintendent" that a sale had been made at a price not less than that indicated in the offer.

(e) The Superintendent was to forward to First Security Bank the stock power together with his certificate to the effect that the offering requirements and the law and regulations had been complied with.

24. The sale and transfer procedure pertaining to Ute Distribution Corporation stock established by First Security Bank was a deviation from the precise procedure (a) specified in the Articles of Incorporation of Ute Distribution Corporation, (b) imprinted upon the stock certificates, and (c) contained in Public Law 671 and the regulations thereunder, in the following particulars:

(a) In that a stock power was accepted in lieu of the endorsement of the assignment imprinted on the obverse of the stock certificate.

(b) In that the selling stockholder, rather than the purchaser or the Superintendent, was required to furnish evidence that the law and regulations had been complied with.

(c) In that the Certificate of the Superintendent that the law and regulations had been complied with was supplied to the Bank, rather than to the purchaser.

First Security Bank was at all times material to plaintiffs' claims herein, aware of the requirements of the Articles of Incorporation of Ute Distribution Corporation of the law and regulations and knowingly permitted or acquiesced in the above enumerated deviations because it had determined that it was inconvenient for the Bank to follow the precise procedure prescribed in the Articles and Regulations and it appeared that the procedure utilized was in substantial compliance and agreeable to the officers of the Ute Distribution Corporation.

25. First Security Bank of Utah, at various times prior to August 27, 1964, was aware that various provisions of the law and regulations relative to the transfers of stock were being circumvented, but failed to take any action with respect thereto. Such irregularities included the following:

(a) Documents of transfer indicated that assignments of stock were being taken, and part consideration paid therefor, prior to the time when the posting or advertising requirements of law had been complied with.

(b) Stock certificates of Indians containing undated endorsements were accepted for transfer after August 27, 1964, without determining if the transfer was in fact prior to August 27, 1964, and a prior offer to the members of the Ute Indian Tribe a prerequisite therefor.

(c) Documents of transfer were accepted on the stationery of automobile dealers, or under other circumstances, indicating that the "mixed-blood" Indian was receiving consideration other than cash.

(d) In various instances the Bank received documents indicating that the Indian was, in fact, receiving an automobile rather than the cash recited in his Affidavit.

(e) Bank official purposely held stock certificates until after August 27, 1964, so as to avoid the advertising requirements and advised prospective purchasers to delay making any transactions until after that date for the purpose of avoiding the requirements and restrictions of the law.

26. At all times pertinent to plaintiffs' claims herein, First Security Bank required that an official at its Roosevelt office, or some other bank, guarantee the signature of the selling stockholder as distinguished from the mere witness of the signature. In situations where the signature was merely witnessed by a bank official, the certificate was returned and transfer refused until such time as a signature guarantee had been obtained.

27. At all times pertinent to plaintiffs' claims herein, First Security Bank was fully aware that the acts of Mr. Gale and Mr. Haslem in guaranteeing the signature of "mixed-bloods" on stock powers, relating to Ute Distribution Corporation stock imposed liabilities and responsibilities upon the Bank which the law imposes on guarantors of signatures.

28. Reports of financial and other business transactions effected at the Roosevelt Branch of the First Security Bank were transmitted daily and monthly by the Branch to the Bank's Main Office in Salt Lake City, Utah.

29. First Security accepted stock transfers by non-Indians prior to August 27, 1964, only if its records indicated that the requirements of Public Law 671 and the regulations had previously been complied with by the original Indian owner, in which event the Bank accepted transfers by non-Indians without evidence of posting and unaccepted offers.

30. By reason of the said Agreement of December 31, 1958, the said Affiliated Ute Indian Trust Agreement of July 26, 1960, the said Boyden letter of July 22, 1959, and the implementation of the said agreements and instructions by First Security Bank, said Bank and its agents including Mr. Gale and Mr. Haslem came into possession of inside information about Ute Distribution Corporation, its bank deposits, its cash distributions to stockholders, pending receipts, and its assets, and of personal and confidential information and financial records of "mixed-blood" stockholder of Ute Distribution Corporation beyond that generally available to the plaintiffs.

31. By reason of the said Agreement of December 31, 1958, the Boyden letter of July 22, 1959, and the instructions therein and the acceptance thereof by the Bank, and the knowledge and information obtained by the Bank thereunder, the Bank's possession of and knowledge of the contents of the Articles of Incorporation and stock certificates of Ute Distribution Corporation, the Affiliated Ute Indian Trust Agreement of July 26, 1960, the representations of Bank officers as to the scope and purpose thereof, and the information obtained by the Bank thereunder, the functions and responsibilities it had and assumed in relation to the stock of the Ute Distribution Corporation and the transfer thereof, and the trust and confidence naturally and reasonably imposed in it under all of the circumstances in evidence by the mixed-bloods, First Security Bank and its agents, including Mr. Gale and Mr. Haslem were at all times pertinent to plaintiffs' claims

fiduciaries in the sense that they occupied a position of trust and confidence with reference to the Ute Distribution Corporation and each of the "mixed-blood" stockholders of Ute Distribution Corporation.

32. Gale and Haslem received various fees, commissions, bonuses, tips, or gratuities from non-Indians for their services in facilitating the transfer of the Ute Distribution Corporation stock from "mixed-blood" Indians to non-Indians and on at least one occasion an employee in the Salt Lake Office of the Bank received a small gratuity for facilitating such a transfer.

33. At all times pertinent to the claims of plaintiffs herein, defendants John B. Gale and Verl Haslem were regularly engaged in the act, practice, and course of business of purchasing, both as principal and as agent for undisclosed principals out of the State of Utah, capital stock of Ute Distribution Corporation from "mixed-blood" stockholders. Mr. Gale worked with Mr. Richard Murray who made contact with the "mixed-blood" stockholder and arranged the purchase terms, and Mr. Gale would provide the funds, either before actual sale as "advances" to the "mixed-blood" stockholder, or at the time of the signing of various documents before Mr. Gale.

On a number of such transactions where Mr. Gale and Mr. Murray worked together Mr. Gale would pay Mr. Murray, in cash, one half of the profits or commissions realized by Mr. Gale therefrom. In a number of such instances, Mr. Murray actually paid the "mixed-blood" for his stock in whole or part by an equity in a used automobile, which said fact was well known to Mr. Gale. Mr. Gale deposited with or held at First Security Bank, Roosevelt office, funds for various non-Indian out-of-state buyers, including Phelps, Carpenter, Vannoy, Shaw Trust, and others. The fact of such funds being so held, the amounts thereof, the names of any of such persons

or the prices they were willing to pay, were never, at any time, disclosed to any of the "mixed-blood" stockholders of Ute Distribution Corporation.

Mr. Gale also worked with one Elmo Matthews, one Mills Tooke, and one John Benson, who located out-of-state buyers of Ute Distribution Corporation stock. Said Haslem and Gale also actively solicited contracts for open purchase of Ute Distribution Corporation stock from and for persons who were non-Indians. Such activities were conducted on First Security Bank premises, during Bank business hours, using Bank stationery and secretarial personnel and Bank facilities. These activities of Mr. Gale and Mr. Haslem, acting individually and in concert with others, materially and substantially affected the offer and sell prices of Ute Distribution Corporation stock in 1963, 1964 and 1965.

34. The effect of the participation of Gale and Haslem on the market was minimized by other transactions some of which, it is fair to say, were encouraged by the Bank's participation in other similar transactions and many of which were independently consummated. During 1963 and 1964, mixed-bloods sold 1,387 shares. Fifty of those shares were bought by Verl Haslem (all after August 27, 1964) and 63 by John Gale (44 prior to August 27 and 19 after). Out of the 1,387 shares sold to white men by mixed-bloods in 1963 and 1964, Gale and Haslem together directly bought 113 shares or 8 $\frac{1}{3}$ % of the shares sold by mixed-bloods during those two years. Of the 120 shares sold by the twelve bellwether plaintiffs, Gale directly purchased 10 (5 from Glen Reed and 5 from Wopsock) and Haslem purchased 6 (5 from Glen Reed and 1 from Arthur Workman). Thirty-two other white men who bought directly from mixed-bloods during 1963-64, included the following: Clyde Murray, Richard Murray, Earl Dillman, Clive Sprouse, Richard Bastian, Jack Turner, Sewell Massey, William Hoopes,

LaVere Labrum, Robert Huish, John Chasel, Orin Swain, Wallace A. Davis, Lloyd Labrum, Gordon E. Harmston, Lionel Jenson, James E. Bacon, N. J. Maugher, Jr., Lawrence Luck, Glen L. Anderson, Don Showalter, R. V. Larson, Don Culver, George Houston, J. H. Geerlings, Guy Davis, Kenneth Phillips, Eugene Harmston, Alvin Bowden, Marsden L. Larson, Edgar Clader and George Morris. However, as to all of the designated plaintiffs, Gale or Haslem performed significant steps in implementing their sales as above found and the evidence suggests that this is possibly true concerning the sales of numerous other plaintiffs.

35. Neither Ralph D. Cowan nor any other officer, agent or employee of defendant First Security Bank ever discussed with defendants Gale and Haslem their trust and fiduciary duties respecting Ute Distribution Corporation and mixed blood Ute Indians of said Corporation, even though officials at the Main Office of said Bank were, at all times pertinent to plaintiffs' claims herein, aware that defendants Gale and Haslem, were buying and selling shares of capital stock of Ute Distribution Corporation, both on their own behalf and as agents for others for a fee and which said conduct created a conflict of interest.

36. The deposits of large sums of money at the Roosevelt Office of the First Security Bank by prospective out of state purchasers of Ute Distribution Corporation stock, as aforesaid, was deemed good business for the Bank and the Bank benefited therefrom.

37. The United States mails and other facilities of interstate commerce were regularly employed by defendants First Security Bank of Utah, N.A., John B. Gale and Verl Haslem in connection with the sale and transfer of the shares of capital stock of the plaintiffs herein.

C. Relating Further to the Question of Liability on the Part of the Defendants.

1. Defendant United States of America did not act arbitrarily or capriciously in the exercise of its discretionary functions referred to in the Conclusions of Law with reference to the following matters:

(a) In fixing the time and circumstance of the termination of federal supervision over the trust and restricted property of the mixed-blood members of the Tribe pursuant to law.

(b) In approving the organization of the Ute Distribution Corporation and its activities and functions.

(c) In approving the conditions and procedure whereby mixed-bloods could sell their stock in said corporation as authorized by statute and regulation.

(d) In approving the terms and conditions of the express trust with reference to the property of mixed-bloods who were minors or deemed incompetent to handle their own property.

(e) In designating and approving the trustee.

(f) In approving in connection with the trustee bank those who should be included or eliminated from said express trust, the court also finding in this connection that the bank, in view of the statutory and regulatory plan, did not abuse its legitimate or reasonable discretion in making such determinations.

(g) In declining to conduct a general educational campaign among members of the mixed-blood to discourage the alienation of their stock in Ute Distribution Corporation.

(h) In failing to order or undertake an appraisal of the mineral interests owned by the Ute Distribution Corporation in undistributed lands.

2. The court believes that some of the actions or failures of the defendant United States of America in certain of the discretionary areas mentioned above, particularly in retrospect, were unwise or ill-advised, but in view of the natural aspirations of the mixed-bloods toward self-sufficiency and determination, the statutory mandate and authority to this end, the necessity of arriving at judgments with regard to the implementation of such authority and other related considerations, the court cannot find that there was an abuse of the discretion of the Bureau of Indian Affairs or any other agency of the defendant United States of America in the respects mentioned; and as determined in the Conclusions of Law hereafter no liability can be found upon the basis of the exercise of those discretionary functions pursuant to the express limitations of the Federal Tort Claims Act.

3. As found hereafter as a conclusion of law, while a trust relationship generally ~~was terminated~~ as to the mixed-bloods prior to August 27, 1964, limited aspects of the federal trust relationship continued until the latter date with respect other restrictions governing the alienation of stock in Ute Distribution Corporation issued to mixed-bloods and related considerations. Both as a part of such continuing duties and in connection with functions and duties assumed by the United States of America and particularly its Bureau of Indian Affairs, the defendant United States of America was under the duty to use reasonable care to the extent it lent its offices and assistance to the alienation of such stock to discourage and prevent the inconsiderate, improper, illegal and improvident sale to white persons.

4. With respect to each of the designated plaintiffs the defendant United States of America, through its officers and agents acting within the scope of their authority, by transmittals of information and the execution of certificates or other documents as in the findings more particularly detailed above facilitated the sale of stock of the Ute Distribution Corporation; that if due care had been exercised by the defendant United States of America in avoiding or preventing irregularities in connection with illegal and improvident sales, said sales would not have been made and that the sales of their stock by the designated plaintiffs was the proximate result of the failure of the said United States of America through its officers and agents to use reasonable care.

5. More particularly the court finds that the regulatory plan for the transfer of stock of the mixed-bloods, and the designation of the bank as an agency of the government for this purpose, while involving discretionary functions and decisions, established a situation in which it was especially important for the government to be aware and vigilant concerning the possibilities of the mixed-bloods' being imposed upon in view of such a system; and it became and was the duty of the government under all of the circumstances to use reasonable care to ascertain whether its system through subterfuge or abuse was being utilized to avoid the substantive requirement of fair dealing with the Indians in spite of form and to use reasonable care to see to it that its agent the bank and its employees through conflicts of interest or otherwise did not deal unjustly with said Indians in respect to the transfer of said stock.

6. That the United States of America through its agents and employees and the Bureau of Indian Affairs had reasonable cause to know that the mixed-bloods were being imposed on and victimized in the acquisition of their stock by white

persons through the agency of bank employees and nonetheless took affirmative steps to implement and facilitate the acquisition of the stock of the designated plaintiffs by white persons as in these findings more specifically set out without using reasonable care and taking reasonable steps required in the exercise of reasonable care to prevent said sales to terminate the adverse dealings of said bank employees and to dissuade the designated plaintiffs from selling said stock under the circumstances or at least to fairly bring to the attention of prospective sellers all pertinent facts within the government's knowledge before the government affirmatively implemented the sale of stock in the various cases. As to the designated plaintiffs this the government failed to do.

7. That such negligence on the part of the employees and agents of the defendant United States of America acting within the scope of their authority was the proximate cause of the sale of said stock by the designated plaintiffs.

8. That the designated plaintiffs while not incompetent in the narrow sense of the term, were generally unversed in business transactions, were acting under extreme financial pressures and did not have the judgment, capacity or restraint common to white people of their ages and educations. That aside from Joseph A. Workman and Oran Curry, the designated defendants were generally uninformed and unaware of the potential value of said stock and none of the designated plaintiffs had information or advice sufficient to bring home to them the possibility that such stock eventually might become exceedingly valuable, and particularly were not on reasonable notice until within two years from the institution of this action that they had sold their stock as a result of an unlawful plan or artifice on the part of the bank as negligently permitted and implemented on the part of the government.

9. With the exception of the said Joseph A. Workman and Oran Curry the designated defendants were not contributorily negligent in selling their stock and are not barred by contributory negligence from recovery herein; nor are any of the designated plaintiffs in pari delicto with the defendant bank.

10. That the designated plaintiffs in form subscribed to affidavits which were not full, true and accurate but were not in a position or with information or training sufficient to exercise a considered judgment in this respect and were induced to do so by the purchasers of said stock with the acquiescence and assistance of said agents of the bank.

11. That any irregularities on the part of the designated plaintiffs in the execution of affidavits was not the proximate cause of said plaintiffs' damages since the United States was upon notice of such irregularities and the gist of designated plaintiffs' damages beyond their failure to receive the advertised price was the failure to receive the full market value of said stock.

12. That the defendants Gale and Haslem devised a plan of scheme to acquire stock in the Ute Distribution Corporation from the mixed-bloods and to aid and abet others in acquiring such stock for their own profit, the profit of others and in order to promote bank deposits and activity in other respects. By means of withholding information necessary to render what was stated or implied by them not misleading, and in violation of their duties to make full and fair disclosure to the designated plaintiffs, they aided, abetted and assisted, or directly and completely accomplished the acquisition of said stock from each of the designated mixed-bloods for substantially less than the fair market value of said stock.

13. The defendant Bank was reasonably put upon, and charged with, notice of the improper activities of said employees and was aware of the utilization by said employees of the facilities and prestige of the Bank in accomplishing or aiding in the accomplishment of personal stock acquisitions and created the apparent authority on the part of said agents to accomplish or aid in the accomplishment of said acquisitions knowingly created or permitted the appearance reasonably relied upon and accepted by the designated plaintiffs as an indication that the Bank consented to have said conduct carried on in its behalf by said employees. The said employees had apparent authority to make the representations they did and to conduct the business they did and under all the circumstances of this case the bank is responsible for the conduct of said employees notwithstanding that otherwise the bank acted in good faith and its other officers, agents or employees generally had no part in the improper activity with the exceptions hereinabove referred to.

D. Relating to Damages.

1. The Ute Distribution Corporation was organized pursuant to the laws of the State of Utah as a conduit through which the individual mixed-blood Indians were to receive a proportionate share of the Tribe's interest in (a) Unjudicated and unliquidated claims against the United States and (b) The other assets, viz., underlying minerals not susceptible of practical distribution. The Ute Distribution Corporation owned no other assets and engaged in no business except the managing, jointly with the Ute Indian Tribal Council, of the mineral assets and distribution of the proceeds therefrom.

2. The principal mineral rights owned by the Ute Indian Tribe of the Uintah and Ouray Reservation consists of so-called oil shale deposits. Oil shale is known to exist in the greatest

concentration in the Parachute Creek Member of the tertiary Green River Formation as well as in other members of the Green River Formation, which said member and formation entirely underlie the Uintah and Ouray Reservation with the exception of a strip on its northern boundary. Oil shale in that area is known to have substantial present value and great potential value, the timing of the development of which depends upon technological and practical considerations. There is also considerable oil and gas as well as coal and other minerals.

3. Pursuant to the plan of distribution of the assets of the mixed-blood members of the Ute Indian tribe the United States retained the sum of \$1200 from the funds of each and every plaintiff to be held in the United States Treasury to pay administration costs and expenses for the prosecution of claims against the United States. The interest of each of the plaintiffs in this \$1200 to the extent unexpended was transferred to the purchasers at the time of the sale of plaintiffs' stock.

4. Sale by plaintiffs of their stock also transferred their interest in the sum of \$7,900,586.16, which was appropriated for the confederated bands of the Ute Indians as a result of an award by the Indians Claims Commission with respect to docket number 327 in 1965. Of said sum \$1,173,632.23 was distributed to stockholders in the Ute Distribution Corporation.

5. Sale by plaintiffs of their stock in Ute Distribution Corporation also resulted in the transfer by them of their interest in additional claims against the United States which have not yet been finally adjudicated. Such claims included a stipulated judgment of in excess of \$7,000,000 which moneys have not yet been appropriated and a special appropriation of in excess of \$500,000 which is presently pending before

Congress, and which if realized will result in the distribution of the share of the mixed-bloods to stockholders of said corporation.

6. The evidence indicates that during the years 1964 and 1965, stock in the Ute Distribution Company was being sold by mixed-bloods at a price between \$300 and \$700 per share. The evidence also indicates that during such period stock was being purchased and sold between white persons for prices of approximately \$500 to \$700 per share. What the stock has sold for since the institution of this action is not revealed meaningfully by the evidence, although presumably subsequent to the institution of the action there would be reflected in sales prices at least to a degree the revelations and contentions incident to this litigation.

7. While considerable market data are available concerning the value of said stock, such data are not deemed fully indicative of the fair value of the stock for the purposes of this action. The prices paid during said period were influenced by the improper activities of Gale and Haslem and the negligence of the government as herein found, and by the facts that the typical Indian seller was not as well informed of the potential value of said stock as the typical buyers, the numbers of sellers exceeded the number of buyers, and the typical Indian seller was under heavy economic pressure to sell. There is evidence that a well informed employee of the government had expressed the opinion that the stock was worth in excess of \$700 per share. Only a portion of the depressant factors was attributable to the defendants, and there is indication that in sales between white persons where most of these factors were of minimal importance or were non-existent the price did not materially exceed \$700 per share. There is evidence also that the tribe had reasonable opportunity to purchase when its officials were as well informed concerning the

potential value of the stock as anyone, and that it declined to purchase such stock at available prices ranging between \$350 and \$700.

8. The court cannot accept the claims of the plaintiffs that the stock should be evaluated at in excess of \$28,000 per share for the purposes of this action or that it will have such value in the materially foreseeable future. Any such valuation is deemed speculative and unrealistic, would give plaintiffs the immediate benefit of all they might hope eventually to realize had there been a rescission of said sales without running any risks, uncertainties or delays of stock retention, would give effect to an erroneous measure of damages, and would be incongruous with the situation of numerous mixed-bloods who have retained their stock or who disposed of it without participation or influence of any acts or failures of the defendants.

9. The court believes that its problem is not merely to determine what an undivided mineral interest ultimately might be worth on the basis of limited known transactions and developing technology and conditions were it developed or realized, or to indulge in similar projections of value, nor to be governed solely by the sales prices received for said stock during the particular period in question. But it does consider that the data in evidence going to both these matters were and are relevant in varying degrees to its basic problem of determining in reasonable approximation as of the time of the plaintiffs' losses the fair value of said stock. That there is no evidence going precisely to such value and that the measures suggested by the respective parties cannot be accepted by the court on the basis submitted by them, should not preclude the court as fact finder in reaching a judgment as to value in view of the totality of circumstances in evidence and the plaintiffs' burden of proof on the issue of damages. The

plaintiffs have failed to convince the court by a preponderance of the evidence that said stock as of material times exceeded in value the sum of \$1500 per share but has convinced the court by what it regards as the preponderance of the evidence that the stock at the time of its sale by the designated plaintiffs as hereinabove found.

10. As the result of settlements made by plaintiffs with other defendants prior to and during trial, the designated plaintiffs have received the following amounts:

Glen Reed	\$ 30.93
Fred Burson	399.87
Letha Wopsock	350.05
Louise A. Case	153.91
Melvin Reed	30.93
Marguerite M. Hendricks	350.05
Joseph Arthur Workman	30.93
Leonard Richard Burson	30.93
Oran F. Curry	30.93
Stewart Eugene Reed	30.93
Richard Henry Curry	350.05
Charles T. Reed	30.93

From the foregoing Findings of Fact the court now makes and enters the following

CONCLUSIONS OF LAW

1. The court has jurisdiction over the persons of the parties and the subject matter of this action by virtue of the Tort Claims Act as to the government and the Securities and Exchange Act of 1934 as to the Bank.

2. The burden of proof was upon the plaintiffs to prove that employees of the United States acting within the scope of their employment and authority were negligent and that such negligence proximately caused or contributed to cause the sales in question.

3. The United States at all times pertinent to the claims of the plaintiffs herein, prior to August 27, 1964, owed a duty to each mixed-blood Ute Indian to exercise reasonable care to

(a) Advise each mixed-blood Ute Indian whose stock it documented for sale of significant material facts or information relating to or bearing upon the value of said stock.

(b) Determine and assure that First Security Bank, selected as trustee, business agent and transfer agent by the United States, and the agents of said Bank, faithfully and fairly discharged their duties toward the mixed-bloods with reference to the sale of said stock.

(c) Require and verify by appropriate evidence, that each mixed-blood Ute Indian who sold his shares of capital stock of Ute Distribution Corporation received the same or a greater price than that at which he had offered the said shares to the Ute Indian Tribe and its members and that all sales be on the same terms as stated in said offers;

(d) Require that each mixed-blood Ute Indian be informed, by physical inspection or otherwise, of the substance of the legends printed on the Ute Distribution Corporation stock certificates;

(e) Fairly protect each mixed-blood Ute Indian against imposition or his own improvidence resulting in the loss or dissipation of his shares of capital stock of Ute Distribution Corporation the sale of which the government documented and implemented.

(f) Discourage each mixed-blood Ute Indian stockholder of Ute Distribution Corporation from the sale, mortgage, pledge or other alienation of his shares of capital stock of Ute Distribution Corporation; and

(g) To stress to each mixed-blood Ute Indian stockholder of Ute Distribution Corporation that the Tribal assets of the Ute Indian Tribe, as to which the capital stock of Ute Distribution Corporation represented an interest, were of unknown but substantial value.

4. Notwithstanding the termination of wardship in the broad sense, the Secretary still was under legal duties and responsibilities toward the mixed-bloods at all times prior to August 27, 1964, to use reasonable care in documenting and implementing transfers of stock from the mixed-bloods to see that the statute governing transfers was observed in substance as well as in form, to discourage improvident transfers and to prevent fraud or imposition against the mixed-bloods in connection with the transfers as documented and implemented by the Secretary's acts.

5. It rested with Congress to determine when the guardianship relationship between the government and the mixed-bloods ceased and when and how termination should be effected and whether emancipation would at first be complete or only partial and Congress determined that in spite of general termination of guardianship the emancipation of the mixed-bloods was only partial with reference to the transfer of their stock representing undivided interests in tribal lands and minerals. And the court concludes that the government had a continuing duty to use reasonable care in connection with the documentation and implementation of said transfers. The court further concludes that the view of Superintendent Zollar that the government owed to the mixed-bloods only the

duty to see that sales were implemented in the form provided by the regulations was too narrow a view of the government's responsibility.

6. The government undertook to perform services and functions pursuant to legislative authority, and otherwise, in the implementation and documentation of transfers of stock by the mixed-bloods and had the duty to exercise reasonable care in connection therewith.

7. The duty of the United States not to lend its assistance to transactions concerning which there was reasonable ground to believe were questionable arose particularly in view of the failure of the system approved by the Secretary to bring to the attention of the mixed-bloods through delivery of their stock certificates the warnings printed thereon.

8. By designating, and working with the bank in connection with the stock owned by the mixed-bloods and by formally documenting and implementing transfers by the mixed-bloods in cooperation with the bank, the government created an aura of responsibility in connection with the transactions involving the sale of Ute Distribution Company stock by the mixed-bloods in the light of which the negligence of the agents and the question of contributory negligence on the part of designated plaintiffs must be weighed and evaluated. In the light of such appearance, the artifices of the bank employees were all the more effective, the exercise of reasonable care on the part of the government agents all the more necessary and the acceptance by the Indians of questionable practices all the more natural.

9. The court concludes that the designated plaintiffs have sustained their burden to prove by a preponderance of the evidence that negligence on the part of government employees acting within the scope of their employment in viola-

tion of the above mentioned duties proximately caused damages to the designated plaintiffs.

10. That in the execution of the statute governing termination of mixed-bloods and the disposition of their interest in said corporation, the United States failed to use due care to discourage improvident transfers of said stock by the designated plaintiffs and the acquisition of said stock by white persons through imposition and artifice.

11. The burden was upon the government to prove by preponderance of the evidence that the designated plaintiffs were contributorily negligent and that such negligence proximately contributed to cause the damages complained of. The government has failed to sustain the burden of proof on this point except as to Joseph Arthur Workman and Oran F. Curry. The other plaintiffs by reason of their circumstances, lack of information and understanding and dependence upon government information and assistance are not deemed to have been contributorily negligent under the circumstances.

12. The defendants have failed to prove by a preponderance of the evidence that the claims of the designated plaintiffs are barred by any statute of limitations. The court concludes that the claims of the designated plaintiffs against the government are not barred by 20 U.S.C. 2401. Under the circumstances of the case, the defendants were not reasonably placed upon notice of the unlawful conduct of the Bank's employees or of the legal damage they sustained as a result thereof until within two years of the commencement of this action. The related negligence of the government in documenting and implementing sales by the mixed-bloods in view thereof was not reasonably discoverable by the designated plaintiffs, until within two years before the government was made a party herein.

13. The liability of the United States as herein determined arises out of and is based upon negligent acts or omissions of employees of the United States while acting within the scope of their office or employment in discharging the aforesaid duties and said negligence does not fall within any of the exceptions to the Federal Tort Claims Act specified in 28 U.S.C. 2680, and did not involve discretionary functions.

14. At all times pertinent to the claims of the plaintiffs herein, First Security Bank and its agents, including defendants John B. Gale and Verl Haslem, owed a duty to each mixed-blood Ute Indian stockholder of Ute Distribution Corporation the transfer of whose stock it implemented, aided and abetted or otherwise participated in, to

(a) Avoid any conflict of interest with the interest of the mixed-blood Ute Indian stockholders of Ute Distribution Corporation;

(b) Conduct themselves with loyalty and fidelity with respect to the rights and interests of each mixed-blood Ute Indian stockholder of Ute Distribution Corporation;

(c) Discourage each mixed-blood Ute Indian stockholder of Ute Distribution Corporation from the sale, mortgage, pledge or other alienation of his shares of capital stock of Ute Distribution Corporation;

(d) Stress to each mixed-blood Ute Indian stockholder of Ute Distribution Corporation that the Tribal assets of the Ute Indian Tribe, as to which the capital stock of Ute Distribution Corporation represented an interest, were of unknown but substantial value;

(e) Fully inform each mixed-blood Ute Indian stockholder of shares of capital stock of Ute Distribution Corpora-

tion of any material fact or information known to said Bank or its agents relating to the value, or which could have an influence upon the value, of the capital stock of Ute Distribution Corporation;

(f) Require and verify by appropriate evidence, that each mixed-blood Ute Indian who sold his shares of capital stock of Ute Distribution Corporation received the same or a greater price than that at which he had offered the shares to the Ute Indian Tribe and its members and that all sales be on the same terms as stated in said offers.

(g) Require that each mixed-blood Ute Indian be informed, by physical inspection or otherwise, of the substance of the legends printed on the Ute Distribution Corporation stock certificates;

(h) Verify the regularity of each transfer of Ute Distribution Corporation stock by a mixed-blood Ute Indian as to which the Bank guaranteed signature.

15. The Bank occupied toward the mixed-blood Indians not coming within the express provisions of the trust if not the position of a fiduciary in the strict sense at least a duty to deal with and for the mixed-bloods in good faith and lawfully and without purpose of overreaching or imposition.

16. The defendants Gale and Haslem directly and indirectly by the use of the means and instrumentalities of Interstate Commerce and of the mails in connection with the purchase of shares of the capital stock of Ute Distribution Corporation from the designated plaintiffs employed a device, scheme or artifice to defraud the said plaintiffs, omitted to state material facts necessary in order to make statements which they made in the light of the circumstances under which they were made not misleading to the plaintiffs and used

and employed manipulative and deceptive devices and contrivances and aided other persons in doing so, in violation of Section 10 of the Securities and Exchange Act of 1934 and Rule 10b-5 promulgated pursuant to said section. The Bank became and was responsible for the unlawful acquisitions of the stock of the designated plaintiffs thereby.

17. Within the doctrine of apparent authority as reflected in *Westinghouse Credit Corporation v. Green*, 384 F.2d 298 (10th Cir. 1967), and by reason of the creation of an appearance of responsibility and of ratification, the bank became and is liable for the unlawful acts of its employees Gale and Haslem in participating in the acquisition and purchase of the stock from the designated plaintiffs.

13. The designated plaintiffs were not and are not in *pari delicto* with defendants Gale and Haslem and are not barred from recovery for any such reason.

19. The claims of the designated plaintiffs against the Bank are not barred by any statute of limitations. The limitation provision of the Securities Act of 1933, 15 U.S.C. Section 77(a) does not apply, but rather by analogy the three year statute of limitations governing actions for fraud under the state statute applies.

20. First Security Bank through its agents, Gale and Haslem, wilfully, wantonly and knowingly breached and failed to discharge duties owed to the designated plaintiffs herein and said plaintiffs were thereby deprived of their said stock for an inadequate consideration.

21. The United States mails and other instrumentalities of interstate commerce were regularly employed by First Se-

curity Bank and its agents, including the defendants John B. Gale and Verl Haslem, in connection with the sale by and the purchase from the said plaintiffs of a security, viz., shares of capital stock of Ute Distribution Corporation.

22. The acts and failure of Gale and Haslem, in violation of the proscriptions of Rule 10b-5, proximately caused the loss of the designated plaintiffs' stock for an inadequate consideration.

23. The reasonable and fair value of a share of capital stock of Ute Distribution Corporation at the time of its sale by the designated plaintiffs was \$1500 per share.

24. Except as hereafter provided, each of the designated plaintiffs is entitled to judgment against each defendant in the amount of \$1500 multiplied by the number of shares of said stock sold by each plaintiff, less the fair value of the consideration received by such plaintiff therefor and less the settlements received from other parties as herein found, plus plaintiffs' costs and disbursements herein. Judgment shall not be entered in favor of the said Curry and Workman against the government, nor shall it be entitled against the government as to any sale the commitment of which occurred after August 27, 1964.

25. The court should reserve jurisdiction to adjudicate the claims of plaintiffs other than the designated plaintiffs with due regard to the pertinent factual and legal determinations herein, or as the court may consider proper, and to enter final judgment with respect to all claims.

26. The court should certify the interlocutory judgment concerning the designated plaintiffs for recommended inter-

locutory appeal, since such a course would be likely to advance and expedite the final determination of this case.

Counsel for the plaintiffs shall within fifteen days prepare, serve and file a proposed form of judgment consistent with these conclusions, to be settled at the court's first motion day following said period.

Dated this 18th day of April, 1968:

A. Sherman Christensen
UNITED STATES DISTRICT JUDGE

APPENDIX B

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

ANITA REYOS, et al,

*Plaintiffs, Appellees
and Cross-Appellants,*

v.

UNITED STATES OF AMERICA, et al,

*Defendants, Appellants,
and Cross-Appellees.*

No. 40-69

No. 41-69

No. 42-69

No. 43-69

No. 44-69

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION
(District Court No. C-39-65)

Edmund B. Clark, Attorney, Department of Justice, Washington, D.C. (Shiro Kashiwa, Assistant Attorney General, Washington, D.C., William T. Thurman, United States Attorney, and H. Ralph Klemm, Assistant United States Attorney, Salt Lake City, Utah, and Roger P. Marquis, Attorney, Department of Justice, Washington, D.C., with him on the Brief), for Appellant, United States of America.

Richard C. Cahoon, Salt Lake City, Utah (Thomas R. Blonquist, of Burton, Blonquist, Cahoon, Matheson & Shaffer, Salt Lake City, Utah, with him on the Brief), for Appellant, John B. Gale.

Hardin A. Whitney, Jr., Salt Lake City, Utah (O. Wood Moyle III, Salt Lake City, Utah, with him on the Brief), for Appellant, Verl Haslem.

Marvin J. Bertoch, Salt Lake City, Utah (Merlin O. Baker, of Ray, Quinney & Nebeker, Salt Lake City, Utah, with him on the Brief), for Appellant, First Security Bank of Utah, N.A.

Parker M. Nielson, Salt Lake City, Utah (Adam M. Duncan, Salt Lake City, Utah, with him on the Brief), for Appellees, Anita Reyos et al.

Before LEWIS, Chief Judge, SETH, Circuit Judge, and BRATTON, District Judge.

SETH, Circuit Judge.

These suits were commenced by eighty-five individuals with whom the United States originally had full trust relationship as Indians of the Tribe of the Uintah and Ouray Reservation in Utah. Of this group of plaintiffs twelve individuals were selected by the parties as the ones whose cases would be tried first as test cases. These are referred to as the plaintiffs and are the appellees herein.

An Act of Congress directed that the federal trust relationship with the mixed-bloods of the Tribe be terminated, and the tribal property be divided between the mixed-blood and the full-blood groups. This is referred to as "termination." All plaintiffs belonged to the group of some 490 individuals designated by statute as the mixed-bloods of the Tribe.

The termination statute (68 Stat. 868, 25 U.S.C. §§ 677-677aa) permitted the mixed-blood group to form associations or corporations to handle some of the property difficult or impossible to distribute to individuals which was allocated to the mixed-blood group, and for matters of general concern to this group. One such corporation so formed was the Ute Distribution Corporation, the stock of which and the stockholders are concerned in these suits.

One type of property which the termination statute stated was not to be distributed to individuals was the gas, oil, and mineral interests. Upon division of the tribal property, a portion thereof in undivided interests was allocated to the mixed-blood group. The Ute Distribution Corporation was organized to "handle" this interest of the mixed-bloods jointly with the Tribal Committee which had authority over the full-bloods' share. It was also organized to distribute the group's portion of unliquidated claims against the United States.

Ten shares of stock in the UDC were issued to each person in the mixed-blood group, and distributions or dividends were paid to the stockholders from time to time. The defendant bank entered into a contract with this corporation to act as transfer agent and to provide to it some record keeping and related services. In addition, the bank, under the termination statute, was authorized to act as trustee of

express trusts for mixed-bloods who, in the opinion of the Secretary of the Interior, needed such help.

The individual defendants Gale and Haslem were assistant managers of a facility of the bank located in an area where a number of the mixed-bloods lived, and who dealt directly with some of the plaintiffs in the sale or transfer of their stock.

The plaintiffs were stockholders of the UDC who sold shares of their stock to non-Indians. The bank facilities and services were used in connection with these sales or some of them. The causes of action against the bank allege a breach of the bank's duty arising from the agreement with the UDC and from its participation in the sales of stock. The action against the bank is also based on Regulation 10b-5 of the Securities and Exchange Commission. The causes alleged against the individual defendants Gale and Haslem are based solely on this Regulation.

Some time after these suits were filed the complaints were amended to include a cause of action against the United States under the Tort Claims Act. This cause alleged a breach of duty by the Secretary of the Interior and the local officials of the Bureau of Indian Affairs in connection with the transfer of the shares of stock.

The trial court, in some one hundred pages of findings and conclusions, found the defendant bank and defendants Gale and Haslem liable for damages to each of the twelve plaintiffs whose cases were selected as test cases for all sales made by them. The United States was found liable only as to some of the plaintiffs. The trial court used the figure of \$1500 per share as a value for computing damages.

All defendants have appealed from the judgment of the trial court, and the twelve designated plaintiffs, whose cases

were tried, have cross-appealed on the ground that the damages were inadequate.

Liability of the United States Under the Tort Claims Act:

The position or status of the plaintiffs as related to the provisions and the execution of the termination statute has become one of the fundamental issues on this appeal. The statute, Public Law No. 83-671 (25 U.S.C. §§ 667-677aa), provides solely and expressly for the termination of the federal trust relationship to the mixed-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah, and for termination of federal supervision over the trust and restricted property of the mixed-blood members of the Tribe. It directs that there be made a division of the tribal property between the mixed-blood and the full-blood members, and provides the procedure for termination of the mixed-bloods.

An examination of the significant portions of the statute is necessary for a proper consideration of the issues. The statute provides for the preparation of membership rolls for each group and the partition and distribution of the tribal assets between the two groups. It also states that upon distribution of the divisible property to the mixed-blood members, federal supervision of such member and his property shall thereby be terminated except as to property not susceptible of practical distribution such as oil, gas, and mineral rights which shall remain subject to the provisions of the Termination Act. Upon termination the mixed-blood individuals shall not be entitled to the services performed by the Government for Indians; that statutes of the United States which affect Indians because of their status shall no longer be applicable to such persons, and that the laws of the several States shall apply to the said members in the same manner as to other citizens within the State. The statute further states that the

Secretary shall "... protect the rights of members of the tribe who are minors, non compos mentis, or, in the opinion of the Secretary, in the need of assistance in conducting their affairs, by such means as he may deem adequate, . . ." Provision is made for the mixed-blood members of the Tribe to organize for common purposes and adopt a constitution and bylaws. The Act specifically recites that corporations may be formed by the mixed-bloods for grazing of livestock, for the "handling" of water and water rights, and that distribution of property may be made to such corporations.

As to gas, oil, and mineral rights in the Ute lands, provision is made that these interests be held in undivided shares by the full-blood members on the one hand, and by the mixed-blood group on the other hand. The Act contemplates that an organization be formed by the mixed-blood group for the purpose of empowering individuals to act as "the authorized representatives of said mixed-blood group in the joint management with the tribe and in the distribution and (sic) [of] unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind. . . ." As indicated in the foregoing sentence provision is made in the Act for the joint management of the gas, oil, and other mineral rights by the Tribal Business Committee and the "authorized representatives" of the mixed-blood group. The Act directs that the net proceeds therefrom after deducting the cost chargeable to such management shall be divided between the full-blood and the mixed-blood groups in proportion to their respective numbers on the final membership rolls.

The statute directs that at a stated time the Secretary of the Interior issue a proclamation that the federal trust relationship is terminated. This proclamation was so issued on the 26th day of August, 1961, following the distribution of the property to the mixed-blood members excepting the oil, gas, and minerals as contemplated by the statute.

The mixed-bloods formed a corporation in 1956, the Ute Distribution Corporation (UDC), and 4900 shares of stock were issued. Each mixed-blood received ten shares. The corporate charter recites that it was formed to "manage jointly with the Tribal Business Committee of the full-blood members of the Ute Indian Tribe" the gas, oil and mineral rights in common ownership and unliquidated claims against the United States. This was the undistributed property and legal title remained in the United States. The Secretary of the Interior acquiesced in the formation of the corporation, and approved the Articles of Incorporation. The transfer of shares in this corporation by the plaintiff mixed-bloods to non-Indians gave rise to this litigation. The defendant bank became the transfer agent for the transfer of shares of UDC stock. Distributions to UDC shareholders of receipts from mineral leasing were made from time to time.

Of particular significance to the issues on this appeal is a provision in the termination statute giving the right to the mixed-blood members to dispose of property they received by distribution. This section states:

"Any member of the mixed-blood group may dispose of his interest in the tribal assets prior to termination of Federal supervision, subject to the approval of the Secretary. In the event a member of the mixed-blood group determines to dispose of his interest in any of said real property at any time within ten years from August 27, 1954, he shall first offer it to the members of the tribe, and no sale of any interest, prior to termination of Federal supervision, shall be authorized without such offer to said members of the tribe in such form as may be approved by the Secretary. After termination of Federal supervision the requirement of such offer, in form to be approved by the Secretary, shall be a covenant to run with the land for said ten-

year period, and shall be expressly provided in any patent or deed issued prior to the expiration of said period." (25 U.S.C. § 677n).

See also the Secretary's Regulations at 25 C.F.R. § 243.8.

The essential elements of the quoted section were incorporated in the Articles of Incorporation of the Ute Distribution Corporation to govern the sale of the corporate shares. Thus in the event that a stockholder of the Ute Distribution Corporation desired to sell his stock before August 27, 1964, it was necessary that it first be offered for sale at a stated price to the Tribe or to the members of the Tribe. The procedures and the documents necessary to carry out this provision were arranged for and agreed upon by the local representative of the Bureau of Indian Affairs, by the defendant bank as transfer agent, and by the UDC.

Much of the testimony during the trial concerned the execution and delivery of various documents which were required to carry out this requirement of the corporate charter. This provision can best be referred to as a right of refusal in the members of the Tribe or the Tribe. It expired on August 27, 1964.

As indicated above, the trial court determined that the United States was liable to the plaintiffs under the Tort Claims Act by reason of a breach of duty in connection with the plaintiffs' sale of their shares of stock in the UDC. This is based on a conclusion that a residual wardship or trust relationship existing between the United States and the plaintiffs survived the statutory termination procedures. The trial court found that the United States had a duty to discourage and to prevent "inconsiderate," "improper," "illegal," and "improvident" sales by the plaintiffs to non-Indians. The court further found that if the United States had prevented irregularities in connection

with such sales, "... said sales would not have been made, and that the sales of their stock by the designated plaintiffs was the proximate result of the failure of the United States ... to use reasonable care." The court also determined that the United States had reasonable cause to know that the plaintiffs were being imposed upon and that the other defendants were acting improperly. Thus the court held that the negligence of the United States was the proximate cause of the sale of the stock by the plaintiffs.

In its findings and conclusions the trial court does not refer to any particular source of the Government's duty other than the statement that "limited aspects of the federal trust relationship continued until the later date [August 27, 1964] with respect to the restrictions governing the alienation of the stock in the Ute Distribution Corporation," and that under "such continuing duties," it was obligated to discourage and prevent improper and improvident sales. It would thus appear that the court found the limited trust relationship to continue by reason of the right of refusal which was held by the members of the Tribe or the Tribe and applicable to sales of the corporate stock.

The plaintiffs in this appeal urge that some continuation of the supervision or wardship giving rise to a duty on the part of the United States resulted from the right of refusal. Plaintiffs refer to the provision as a "restriction on property."

We must hold that the trial court was in error in this respect. The provision in the Articles of Incorporation that if the stock was to be sold before August 27, 1964, it should first be offered to "members of the Tribe," constitutes no more than a typical right of refusal in the members of the Tribe or in the Tribe. It was somewhat more difficult to carry out by reason of the fact that notice had to be given to a fairly large number of individuals and provision had to be made to ad-

wise the prospective seller that his offer had or had not been accepted by the members of the Tribe. This the Bureau of Indian Affairs undertook to do. It was also necessary if an offer was not accepted, and the prospective seller completed the sale to a stranger, to demonstrate to the Tribe or its members that the sale was in accordance with the offer made to them. This was done by an affidavit executed by the seller stating the sales price received. Other than these complications the provision is a commonplace one.

Considerable argument is presented as to whether or not the mixed-bloods were members of the Tribe for the purpose of the right of refusal or whether the right was in the Tribe as such or in the members, but this need not be decided for it is clear that the plaintiffs themselves had no rights under the right of refusal. For a discussion of this point see *Ute Indian Tribe of the Uintah and Ouray Reservation v. Probst*, Tenth Circuit, Nos. 125-69 and 126-69, April 20, 1969, F.2d (10th Cir.). The shareholder who was here proposing to sell his stock cannot be considered to be within the group in which the right vested. The right was granted clearly to permit the members of the Tribe, the Tribe, or the full-blood members to have the first right to purchase property which was about to be sold to an outsider. This provision was for their benefit in an economic and practical way, and if any purchase was to be made, the members of the Tribe or the Tribe had to do it. The record shows that the Tribe considered purchasing UDC shares when offered, but did not do so nor did any individuals in the Tribe. The right of refusal did not create any "restricted property" in the shares as the term is generally used.

The right of refusal thus created no duty on the part of the Government to the then terminated mixed-blood plaintiffs who were seeking to sell their shares of stock. Likewise the procedures and documents devised to carry out the right of

refusal and their execution and delivery created no such duty on the part of the United States to the plaintiffs. The statute expressly provides for termination of the Government's relationship with the individual mixed-bloods. The provisions are clear and the termination was accomplished and is final. It is clearly within the power of Congress and no one else to provide for such an end to the relationship between these individuals and the Government. *United States v. Waller*, 243 U.S. 452; *United States v. Nice*, 241 U.S. 591; *Tiger v. Western Investment Co.*, 221 U.S. 286. It is not for administrative officials or for the courts to modify this statutory termination by the creation of some status lying between wardship and complete termination.

There is not an abundance of authority on the application of termination statutes; however, the court in *Crain v. First National Bank of Oregon*, 324 F.2d 532 (9th Cir.), considered the Termination Act relating to the Klamath Tribe. There the court considered determinations made by the Secretary to create express trusts for those "in need of assistance in conducting their affairs," and the effectiveness thereof after termination. The court held that termination was complete except as to the express trusts, and recognized the power of Congress to provide the how, when, and extent of termination. The plaintiffs here urge that the *Crain* case holds that there continues some trust relationship with all the terminated members. *Crain* holds that where express trust exists, the individuals under such trusts cannot complain that their property is in trust while others may have received theirs outright. We are not concerned in the case before us with the property of individuals under express trusts. See also *Menominee Tribe v. United States*, 391 U.S. 404, and *Klamath and Modoc Tribes v. Maison*, 338 F.2d 620 (9th Cir.).

The trial court was thus in error in concluding that "limited aspects of the federal trust relationship continued,"

or that any form of wardship continued, and thus that some duty on the part of the Government to the plaintiffs continued after termination in connection with their sales of UDC stock. There being no duty the trial court was in error in awarding damages against the United States under the Tort Claims Act.

Position of Defendant Bank Under its Contract With The UDC:

The legal relationships and the business relationships between the plaintiffs and the defendant bank, and with the Ute Distribution Corporation were determined basically and initially by the contract which had been entered into between the bank and the UDC. This agreement was modified somewhat from time to time in practice. The contract was entered into in 1958, but the principal issues with which we are concerned took place in the years 1963, 1964, and 1965.

The principal purpose of the contract between the bank and the UDC was to have the bank provide stock transfer services, to do the corporate record keeping, the corporate accounting, and handle distributions or dividends.

Of particular consequence in this case was the provision that the bank would act as stock transfer agent for the corporation, and would also assist the corporation in the conduct of its business. The record indicates that it was expected that the bank in the performance of its duties would also accommodate or provide stock transfer services for the individual stockholders of the corporation. This was demonstrated by the fact that the bank was to provide facilities and personnel at Roosevelt, Utah, in an area where many mixed-bloods resided, in order to accommodate transfers of stock. The trial court found that the Roosevelt office of the bank was maintained in part "... for the purpose of facilitating and assisting mixed-bloods in the transfer of Ute Distribution Corporation stock. ..."

It is apparent that the transfers of stock of this particular corporation would be somewhat complicated by the existence of the right of refusal in the members of the Tribe, which has been hereinabove described. As indicated, this right of refusal necessitated the creation of forms which would demonstrate that the right of refusal had been complied with in order that the bank could proceed with its customary duties as transfer agent.

The contract provided for direct compensation to the bank as transfer agent. It is also apparent from the record that the bank was seeking individual accounts from the tribal members and others. It must be assumed that the parties contemplated the usual notary fees and other ordinary fees incident to the transfers of shares.

As a separate matter the bank had also solicited the use of its trust facilities for express trusts to be established by the Secretary for Indians whom he felt were not able to handle their property, all as provided in the termination statute. The position of the bank under these express trusts and the statutory provisions for them must be contrasted with the position of the bank in its capacity as transfer agent. The two created separate and distinct functions and duties on the part of the bank.

The stock transfer contract contained no provision whereby the bank was to discourage stockholders from selling or transferring their shares; instead the procedure which was established was to facilitate such transfers and located at a place convenient to prospective transferees.

As the contract was put into practice, the bank retained the stock certificates of the individuals, and the transfers were handled by stock powers in the usual way. The record shows that the certificates were so retained by the bank in order to prevent their loss by the individual stockholders, with

the attendant problems to the corporation and the transfer agent in replacing lost certificates. As will be hereinafter mentioned, the stock certificates bore a warning or admonition to the owners to be careful in selling them as they were of undetermined value. Since the stockholders did not have possession of the certificates, they did not have an opportunity to read this warning.

Much of the testimony on behalf of the plaintiffs concerned the contents of affidavits which were executed by the plaintiffs in connection with their sale of shares. These affidavits were devised to carry out the right of refusal in that they were to demonstrate that the individual stockholder had in fact sold the shares for the price that he had theretofore offered them to the Tribe or its members by public notice. The affidavit was thus to show that the members of the Tribe did in fact have a real first refusal at the actual selling price. The record shows that in some instances the affidavit may not have accurately described the facts in connection with the sale to the third party. Under the procedure the sale was to be for cash, but the record shows that instead some plaintiffs received automobiles or other tangible property directly or indirectly for their stock instead of cash, or part cash and part tangibles. Bank employees notarized most of these affidavits. The plaintiffs here thus complain that these affidavits which they executed were not accurate, and that the bank and its officials were aware that they were not correct. The record also shows that the Bureau of Indian Affairs office relied upon the recitations in the affidavits when received and issued to the bank a certificate which acknowledged that the right of refusal had been complied with and that the bank could proceed to transfer the shares in the usual way. No shares were transferred by the bank without having first received such a certificate during the period the right of refusal was operative.

The trial court expressly concluded that the bank had a duty to discourage the plaintiffs from the sale of their shares of stock of the UDC. This finding or conclusion is not supported by the record as no such duty was created by the practice of the bank and none was provided in the contract. Instead the stock transfer provisions and facilities were provided in order to accomplish and facilitate transfers. The bank was obviously obligated to transfer the shares before August 27, 1964, when requested and when the representative of the Bureau of Indian Affairs indicated that the right of refusal had been honored; and after August 27, 1964, when the stockholder requested that a transfer be made.

The bank, shortly after the contract was executed, received a letter from the attorney for the Ute Distribution Corporation asking that it attempt to discourage sales, but no response was made to the letter and no duty or obligation was created thereby. As described above, Congress had directed termination of the Government's relationship with the plaintiffs, and this had been accomplished at the pertinent times. The business inexperience of the plaintiff stockholders does not give rise to any duty on the part of the bank to treat them in any manner different than it would treat any other customer inexperienced in business. The record is clear that the plaintiff's corporation, the UDC, and its officers were active in their attempts to discourage stockholders from transferring their shares and had written letters and held meetings on this subject, all apparently with little success.

It would appear that the trial court placed considerable reliance in reaching its conclusion on the asserted inaccuracies in the affidavits executed by the plaintiffs concerning their ultimate sales of the shares. However, the bank or the Government had no duty as to these plaintiffs to see that they exe-

cuted affidavits that reflected the true transaction. Furthermore the affidavits were executed in connection with the right of refusal in which, as indicated above, the defendants had no interest. It is difficult to see how they can complain of inaccuracies in their own affidavits.

The record shows that the bank officials at the Roosevelt office of the defendant bank were active in encouraging a market for the UDC stock among non-Indians. This was probably not contemplated by the UDC-bank relationship. This gave rise to some indirect benefits to the bank by way of increased deposits, but it did not constitute a violation of any duty the bank may have had to the plaintiffs by contract or otherwise.

Liability Under Regulation 10b-5 of the Securities and Exchange Commission:

The only cause of action alleged against the individual defendants Gale and Haslem is based upon the violation of Regulation 10b-5 of the Securities and Exchange Commission (17 C.F.R. § 240.10b-5). This regulation was promulgated under the authority of section 10(b) of the 1934 Securities and Exchange Act. This cause of action is also asserted against the defendant bank. Each plaintiff states a separate cause against each of such defendants.

The record shows that the defendant Gale purchased for resale for his personal profit ten shares of UDC stock from two of the plaintiffs. The several plaintiffs sold 122 shares of their stock in some thirty-two separate transactions. The trial court found the defendant Gale liable on the sale of all of the 122 shares.

As to his individual purchases, the record shows that Gale bought five shares from the plaintiff, Glen V. Reed, on July

8, 1964, for \$350 per share. This purchase was made by Gale for Neal H. Phelps and Esther Phelps, or were resold to such persons who paid Gale \$530 per share for these shares. Defendant Gale did not advise plaintiff Reed of the resale.

Gale also purchased three shares of stock from the plaintiff, Letha H. Wopsock, some time after August 21, 1964, for \$350 per share for resale at a higher price which is not disclosed in the record. He also purchased another share from the same person in October 1964 for \$400 and an additional share in November 1964 for \$350. The disposition by Gale of these two shares is not indicated in the record.

The record does not show whether or not the defendant Gale participated for his personal profit or derived a personal profit from the purchase by other persons of shares of stock from the plaintiffs.

The participation by the defendant Gale in the sales by other plaintiffs to other persons as shown in the record need not be described in detail. In these transactions a typical participation by the defendant Gale was to act as a notary upon affidavits executed by the purchaser in connection with such a sale which have been hereinabove described or to guarantee the seller's signature on a stock power which was the ultimate basis for the transfer of the shares of stock. As indicated above the trial court found the defendant Gale liable on each of these transactions. However, we hold this to be in error.

The "participation" by the defendant Gale in the execution of documents as shown by the record in connection with these sales cannot constitute a breach of duty on his part to any of the plaintiffs. In this connection he did no more than to perform ministerial functions required to carry out the transfer of the shares of stock. In this connection the de-

defendant had no obligation to determine whether the recitations made in the affidavit were correct or not. Furthermore, even if he may have known that the recitations in this affidavit were not entirely correct, the plaintiff executing the particular affidavit was prepared and did assert that the facts were correct, and defendant Gale had no obligation to perform anything but the requested ministerial acts.

As to the individual defendant, Verl Haslem, the record indicates a participation in the transactions which is similar to that described above as to the defendant Gale. The trial court also found this defendant liable on each of the thirty-two transactions covering the 122 shares sold by the plaintiffs in this action. The record shows that the defendant Haslem purchased in November 1964 one share of the UDC stock for a third party or for resale for his personal profit from plaintiff Workman for the sum of \$350. This was resold by this defendant for an undisclosed price to his brother.

This defendant also purchased on August 31, 1964, five shares of stock from plaintiff, Glen V. Reed, for \$400 per share and resold the stock apparently on the same day at a price not disclosed in the record.

This defendant Haslem "participated" in the other transactions much in the same manner as did the defendant Gale by the execution of affidavits and of signature guarantees and in some instances had nothing whatever to do with the sale. As to these transactions, we find no duty on the part of this defendant to any of the plaintiffs as his acts were purely ministerial in character and were required to accomplish the stock transfers. Likewise his execution of affidavits or guarantees of signature gave rise to no liability to the plaintiffs. Again although the contents of the affidavit may not have been entirely correct, and the defendant may have known of this fact, it did not create any liability to the maker of the incorrect affidavit.

The record clearly shows that the defendant bank, the employer of the defendants Gale and Haslem, had knowledge that its employees were purchasing stock for their own account. Further the record shows that in these transactions, the employees used the bank facilities, premises, and personnel. Under these circumstances, these employees as far as the plaintiffs were concerned were apparently acting within their authority. Thus the bank did become liable for any violation of the Regulation 10b-5.

Regulation 10b-5 reads as follows:

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,

"(1) to employ any device, scheme, or artifice to defraud,

"(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

"(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security."

Neither the regulation nor the Act contains any statement of standards to be applied or elements necessary in actions for civil liability to be brought under the Act, and in fact there is no express provision for such actions.

The origin of the rule, its relation to section 17 of the 1933 Act (15 U.S.C. § 77q(a)) and the initial doubt as to

whether civil actions were contemplated need not be stated here as these matters are elsewhere fully described. *Jensen v. Voyles*, 393 F.2d 131 (10th Cir.); *Doelle v. Ineco Chemicals*, 391 F.2d 6 (10th Cir.); *Crist v. United Underwriters, Ltd.*, 343 F.2d 902 (10th Cir.); *Stevens v. Vowell*, 343 F.2d 374 (10th Cir.). See, *Cohen, Truth in Securities Revisited*, 79 Harv. L.Rev. 1340; 3 *Loss, Securities Regulation*, ¶¶ 1785-86; *Fischman v. Raytheon Mfg. Co.*, 188 F.2d 783 (2d Cir.); *Kardon v. National Gypsum Co.*, 69 F.Supp. 512 (E.D.Pa.); *Securities & Exchange Comm'n v. Texas Gulf Sulphur Co.*, 401 F.2d 833 (2d Cir.) (258 F.Supp. 262); *Annot.*, 37 A.L.R.2d 649; 59 *Yale L.J.* 1120; 20 *Stan.L.Rev* 347; 63 *Nw.U.L.Rev.* 452; 16 *U.C. L.A.L.Rev.* 404.

As to the elements to be established, the record shows that the individual defendants made a misstatement of a material fact in representing, in those instances wherein they purchased stock for sale at a personal profit, that the prevailing price or market price was the figure at which their own purchase was made. This representation was obviously false in those instances in view of the fact that they resold the shares almost immediately at a higher price. The record shows that the plaintiffs considered these defendants to be familiar with the market for the shares of stock and relied upon them when they desired to sell their shares. The individual defendants, in stating to the plaintiffs in instances where individual purchases were made by the defendants with quick resale at a higher price that the price offered was "all that they could give" or "was all that it was worth" or similar statements, made a misrepresentation as to the prevailing price. The defendant Haslem testified with reference to his purchase from plaintiff Workman, "I contacted a number of people telling them that if they were interested in selling, I was interested in offering the highest price." The bank and the

individual defendant employees had developed a market at the Roosevelt Agency of the bank for UDC stock, received inquiries from time to time for stock, and had customers of the bank who were prepared to make purchases from time to time. The defendant bank and the individual defendants were thus entirely familiar with the prevailing market for the shares at all material times.

The record shows in some instances that purchases for resale were made, but the resale price is not disclosed in the record. If in these instances there was a resale at a higher price, there was demonstrated thereby a misrepresentation to the plaintiff concerned as to the prevailing market price. This was a material fact. *List v. Fashion Park, Inc.*, 340 F.2d 457 (2d Cir.).

In *Stevens v. Vowell*, 343 F.2d 374 (10th Cir.), we considered a private action under Regulation 10b-5. The trial court had made findings that critical facts had been concealed from the plaintiff investor and misrepresentations were made to him. The court also specifically found that the plaintiff had there relied upon all the representations made to him by the defendants. These findings were supported by the record. There was no issue on appeal as to reliance, and little as to the fact of misrepresentations. We there stated that it was not necessary to prove common law fraud, but necessary to prove "one of the prohibited actions." This referred to one of the (a), (b) or (c) subsections of the rule. In the cited case the (b) subsection was relied upon and with the reliance established the case was proven. The opinion does not hold that reliance is not required, as the plaintiff urges. It is a basic element of a cause of this nature, and was there shown.

In the case before us the facts of misrepresentation have been shown as to several of the transactions. The record, however, does not contain any evidence relating to reliance

by the plaintiffs on the representations of the defendants Gale and Haslem. This is a necessary element of the cause alleged. *List v. Fashion Park, Inc.*, 340 F. 2d 457 (2d Cir.), considers, defines, and requires both materiality of the representations and reliance. See also, 16 U.C.L.A.L.Rev. 404; 63 Nw.U.L.Rev. 434. The plaintiffs allege that certain acts and statements of the defendants were directed to them or were the proximate cause of their damages. Thus the causal connection must be established — that in fact the loss resulted from defendants' acts — a simple and fundamental proposition in such actions for private damages. The plaintiffs' argument refers to several cases where the proceedings were brought by the SEC for enforcement. The matter of reliance was not there considered, but these are from an entirely different position.

The record does not support the trial court's finding of a conspiracy, plan, or scheme to violate any duties owed to the plaintiffs by any of the defendants. The trial court was in error in so finding.

The record shows sufficient evidence of the use of the mails or instrumentalities of commerce by the individual defendants in their violation of Regulation 10b-5 as described above. The testimony as to the use of checks, even on the defendant bank, together with the correspondence with prospective buyers is sufficient. The defendant Haslem purchased in what are referred to as "face to face" transactions with a plaintiff and the certificate was delivered. However, again a check or checks were used and the trial court's finding is supported on this issue although the facts are not well developed.

The pretrial order is not entirely clear as to the inclusion of transactions taking place after August 27, 1964. However, we must agree with the trial court that these properly became trial issues.

The measure of damages has been referred to above briefly. We hold that the trial court was in error in using the value of \$1500 per share in the computation of damages as the evidence does not support such a figure. Also the evidence does not support the finding that the market price was depressed by the defendants. As to the cross-appeals, the evidence as to greater values was entirely speculative, as the trial court concluded.

The measure of damages for breaches of duty under Regulation 10b-5 is the profit made by the defendant on resale of stock purchased from the plaintiffs. If no resale was made or if the resale was not at arm's length, then the measure is the prevailing market price at the time of the purchase from the plaintiffs.

REVERSED and REMANDED for further proceedings in accordance with this opinion.

APPENDIX C

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

No. 175-68 - JUNE 1970 TERM

AFFILIATED UTE CITIZENS OF THE STATE OF UTAH, an unincorporated association formed by and under the supervision of the Secretary of the Department of the Interior pursuant to Public Law 83-671 (25 U.S.C. §§ 677-677aa) composed of 490 so-called "mixed-blood" members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, suing on its own behalf and as representative of and for and on behalf of its 490 members and their heirs and legal representatives as a class; and the 490 so-called "mixed-blood" members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, individually and as an identifiable Indian group or band,

Appellant,

v.

THE UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION
(District Court No. C-82-68)

Parker M. Nielson, Salt Lake City, Utah (Adam M. Duncan, Salt Lake City, Utah, with him on the Brief), for Appellant.

Edmund B. Clark, Attorney, Department of Justice, Washington, D.C. (Glen E. Taylor, Acting Assistant Attorney General, and Roger P. Marquis, Attorney, Department of Justice, Washington, D.C., with him on the Brief), for Appellee.

Before LEWIS, Chief Judge, SETH, Circuit Judge, and BRATTON, District Judge.

PER CURIAM.

This is an action wherein the plaintiff seeks to have conveyed to its individual members, "pro rata," a portion of the oil, gas, and minerals underlying the Uintah and Ouray Reservation in Utah.

The plaintiff is an unincorporated association organized for and on behalf of some 490 mixed-bloods who were formerly or may be now members of the Ute Indian Tribe of the Uintah and Ouray Reservation. The Congress enacted Public Law No. 83-671 (25 U.S.C. §§ 677-677aa) which provides for the termination of the trust relationship with the mixed-blood

members of this Ute Tribe and for the distribution to them of certain tribal property. The terms of this statute and its execution have been described at some length in the companion cases, *Anita Reyos et al v. United States of America*, Nos. 40-69 through 44-69, and it is not necessary to describe them further in this opinion.

The termination statute mentions specifically that the interest of the mixed-blood group in the gas, oil, and other minerals and in certain unadjudicated claims was not to be distributed pursuant to the statute. The mixed-bloods' share of this interest constitutes some 27.1686 per cent thereof, the balance being retained by or on behalf of the full-blood members of the Tribe.

The trial court held that it did not have jurisdiction to entertain this action by reason of the fact that it was an unconsented suit against the United States. I further indicated that the termination statute by the provision above referred to precluded any relief to the plaintiff. The plaintiff took an appeal from the dismissal of its complaint and of its action by the trial court.

On this appeal the appellant urges that the action may be maintained pursuant to 25 U.S.C. § 345. This statutory provision provides that an Indian may bring suit against the United States wherein he seeks to gain possession of an allotment when he has been excluded therefrom, or from any parcel of land to which he is lawfully entitled by virtue of an Act of Congress. The appellant's complaint on its face demonstrates that it does not seek relief on behalf of its members as persons who have been excluded from an allotment or have been excluded from or are entitled to possession of a parcel of land. This section of the statute is obviously intended to provide relief to the Indians entitled to possession of allotments and similar interests. The cases and statutory law have ascribed to the word "allotment" a well recognized meaning. The

nature of the interest sought to be protected and secured does not resemble that described in the statute.

By reason of the Termination Act, the mixed-blood group has an undivided 27 per cent beneficial interest in the oil, gas, and minerals; while the full-blood group owns the remainder. The legal title has remained in the United States. The statute of termination directs that no distribution or partition be made of these undivided interests to the mixed-blood members. The statute makes specific provision for the management of these beneficial interests with the Tribal Business Committee representing the full-blood members as to their interest, and an association or corporation representing the mixed-blood group in the management of its portion. It is not an issue in this case as to what organization on behalf of the mixed-blood group has the right of management, and we do not so decide.

The issues presented in this case fundamentally resemble those presented in *Naganab v. Hitchcock*, 202 U.S. 473; *Motah v. United States*, 402 F.2d 1 (10th Cir.); *Harkins v. United States*, 375 F.2d 239 (10th Cir.), and *United States v. Preston*, 352 F.2d 352 (9th Cir.).

The appellant also urges that this action comes within the provisions of 28 U.S.C. §§ 1399 and 2409. However, we find no basis for jurisdiction under these provisions which contemplate an ownership wherein the United States is a joint tenant or tenant in common with the party seeking relief. In the case before us legal title is vested in the United States, but the beneficial title is owned entirely by the two groups of individuals.

Thus on the basis of *Naganab v. Hitchcock*, and the cases cited hereinabove, we hold that the trial court was correct in its determination that it did not have jurisdiction of this action, and the case is therefore **AFFIRMED**.

APPENDIX D

PERTINENT PROVISIONS OF THE UTE TERMINATION ACT (25 U.S.C. §§677-677aa)

Enacted August 27, 1954, 68 Stat. 868

§ 677. *Purpose*

The purpose of sections 677 677aa of this title is to provide for the partition and distribution of the assets of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah between the mixed-blood and full-blood members thereof; for the termination of Federal supervision over the trust, and restricted property, of the mixed-blood members of said tribe; and for a development program for the full-blood members thereof, to assist them in preparing for termination of Federal supervision over their property.

§ 677a. *Definitions*

For the purposes of section 677-677aa of this title—

(a) "Tribe" means the Ute Indian-Tribe of the Uintah and Ouray Reservation, Utah.

(b) "Full-blood" means a member of the tribe who possesses one-half degree of Ute Indian blood and a total of Indian blood in excess of one-half, excepting those who become mixed-bloods by choice under the provisions of section 677c of this title.

(c) "Mixed-blood" means a member of the tribe who does not possess sufficient Indian or Ute Indian blood to fall within the full-blood class as herein defined, and those who become mixed-bloods by choice under the provisions of section 677c of this title.

(d) "Secretary" means Secretary of the Interior.

(e) "Superintendent" means the Superintendent of the Uintah and Ouray Reservation, Utah.

(f) "Asset" means any property of the tribe, real, personal or mixed, whether held by the tribe or by the United States in trust for the tribe, or subject to a restriction against alienation imposed by the United States.

(g) "Adult" means a member of the tribe who has attained the age of twenty-one years.

§. 677b. *Method of determining Ute Indian blood*

For the purposes of sections 677-677c of this title Ute Indian blood shall be determined in accordance with the constitution and bylaws of the tribe and all tribal ordinances in force and effect on August 27, 1954.

§ 677c. *Transfer of members from full-blood roll to mixed-blood group; time; certification by Secretary*

Any member of the tribe whose name appears on the proposed roll of full-blood members as provided in section 677g of this title and any person whose name is added to such proposed roll as the result of an appeal to the Secretary may apply to the Superintendent to become identified with and a part of the mixed-blood group; *Provided*, That such application is made within thirty days subsequent to the publication of such proposed roll or in the event of an appeal within thirty days subsequent to notification of the decision on said appeal: *And provided further*, That before such transfer is made upon the official rolls the Secretary shall first certify that, in his opinion, such change in status is not detrimental to the best interest of the person seeking such change.

§ 677d. *Restriction of tribe to full-blood members after publication of final rolls; non-interest of mixed-blood members; new membership*

Effective on the date of publication of the final rolls as provided in section 677g of this title the tribe shall thereafter consist exclusively of full-blood members. Mixed-blood members shall have no interest therein except as otherwise provided in sections 677-677aa of this title. New membership in the tribe shall thereafter be controlled and determined by the constitution and bylaws of the tribe and ordinances enacted thereunder.

§ 677e. *Organization of mixed-blood members; constitution and bylaws; representatives; actions in absence of organization*

The mixed-blood members of the tribe, including those residing on and off the reservation, shall have the right to organize for their common welfare, and may adopt an appropriate constitution and bylaws which shall become effective when ratified by a majority vote of the adult mixed-blood members of the tribe at a special election authorized and called by the Secretary under such rules and regulations as he may prescribe. Such constitution may provide for the selection of authorized representatives who shall have power to take any action that is required by sections 677-677aa of this title to be taken by the mixed-blood members as a group: *Provided*, That nothing herein contained shall be construed as requiring said mixed-blood Indians to so organize if such organization is by them deemed unnecessary. In the event no such approved organization is effected, any action taken by the adult mixed-blood members, by majority vote, whether in public meeting or by referendum, but in either event, after such notice as may

be prescribed by the Secretary, shall be binding upon said mixed-blood members of the tribe for the purposes of said sections.

§ 677f. *Employment of legal counsel for mixed-blood members; fees*

The mixed-blood members of the tribe as a group may employ legal counsel to accomplish the legal work required on behalf of said group under the terms of sections 677-677aa of this title, and for any other purpose by them deemed necessary or desirable; the choice of counsel and fixing of fees to be subject to the approval of the Secretary until Federal supervision over all of the members of said group and their property is terminated in the manner provided in section 677o of this title.

§ 677g. *Membership rolls of full-blood and mixed-blood members; preparation and initial publication; appeal from inclusion or omission from rolls; finality of determination; final publication; inheritable interest; future membership*

The tribe shall have a period of thirty days from August 27, 1954 in which to prepare and submit to the Secretary a proposed roll of the full-blood members of the tribe, and a proposed roll of the mixed-blood members of the tribe, living on August 27, 1954. If the tribe fails to submit such proposed rolls within the time specified in section 677-677aa of this title, the Secretary shall prepare such proposed rolls for the tribe. Said proposed rolls shall be published in the Federal Register, and in a newspaper of general circulation in each of the counties of Uintah and Duchesne in the State of Utah. Any person claiming membership rights in the tribe, or an interest in its assets, or a representative of the Secretary on behalf of any such person, within sixty days from the date of publication.

in the Federal Register, or in either of the papers of general circulation, as hereinbefore provided, whichever publication date is last, may file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from either of such proposed rolls. The Secretary shall review such appeals and his decision thereon shall be final and conclusive. After disposition of all such appeals to the Secretary, and after all transfers have been made pursuant to section 677c of this title the roll of the full-blood members of the tribe, and the roll of the mixed-blood members of the tribe, shall be published in the Federal Register, and such rolls shall be final for the purposes of sections 677-677aa of this title, but said sections shall not be construed as granting any inheritable interest in tribal assets to full-blood members of the tribe or as preventing future membership in the tribe, after August 27, 1954, in the manner provided in the constitution and by-laws of the tribe.

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§ 677h. *Sale or other disposition of certain described lands; funds; relief of United States from liability; assigned lands*

The business committee of the tribe for and on behalf of the full-blood members of said tribe, and the duly authorized representatives for the mixed-blood members of said tribe, acting jointly, are authorized, subject to the approval of the Secretary, to sell, exchange, dispose of, and convey to any purchaser deemed satisfactory to said committee and representatives, any or all of the lands of said tribe described as follows, to wit: [Real property descriptions omitted]

All such sales, exchanges, or other dispositions shall be made upon such terms as said committee and said authorized representatives shall deem satisfactory and may be made pursuant to bids or at private sale, and all funds or other property derived from such sales, exchanges, or other dispositions shall be

subject to the terms of sections 677-677aa of this title. Consent by the tribal business committee and said authorized representatives to the sale, exchange, or other disposal of the lands herein described shall relieve the United States of any liability resulting from such sale, exchange, or other disposition. The tribal business committee and said authorized representatives are further authorized to sell or dispose of tribal assigned lands to the assignees thereof under such terms and conditions as may be agreed upon by the said tribal business committee and said authorized representatives with the assignees, subject, however, to the approval of the Secretary.

§ 677i. *Division of assets; basis; prior alienation or encumbrance; partition by Secretary upon non-agreement; assistance; management of claims and rights; division of net proceeds; applicability of usual processes of the law to originally owned stock of corporate representative and to corporate distributions.*

The tribal business committee representing the full-blood group, and the authorized representatives of the mixed-blood group, within sixty days after the publication of the final membership roll, as provided in section 677g of this title, shall commence a division of the assets of the tribe that are then susceptible to equitable and practicable distribution. Such division shall be by agreement between them subject to the approval of the Secretary. Said division shall be based upon the relative number of persons comprising the final membership roll of each group. After such division the rights or beneficial interests in tribal property of each mixed-blood person whose name appears on the roll shall constitute an undivided interest in and to such property which may be inherited or bequeathed, but shall be subject to alienation or encumbrance before the transfer of title to such tribal property only as pro-

vided in sections 677-677aa of this title. Any contract made in violation of this section shall be null and void. If said groups are unable to agree upon said division within a period of twelve months from the date of such commencement, or any authorized extension of said period granted within the discretion of the Secretary, the Secretary is authorized to partition the assets of the tribe in such manner as in his opinion will be equitable and fair to both groups. Such partition shall give rise to no cause of action against the United States and the costs of such partition shall be paid by the tribe. The Secretary is authorized to provide such reasonable assistance as may be requested by both groups, or by either group, in formulation and execution of a plan for the division of said assets, including necessary technical services of Government employees at Fort Duchesne, Utah, and arranging for necessary consultations with representatives of Federal departments and agencies, officials of the State of Utah, and political subdivisions thereof, and members of the tribe. All unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall be managed jointly by the Tribal Business Committee and the authorized representatives of the mixed-blood group, subject to such supervision by the Secretary as is otherwise required by law, and the net proceeds therefrom after deducting the costs chargeable to such management shall first be divided between the full-blood and mixed-blood groups in direct proportion to the number of persons comprising the final membership roll of each group and without regard to the number of persons comprising each group at the time of the division of such proceeds.

The stock of any corporation organized by the mixed-blood group for the purpose of empowering the officers of such corporation to act as the authorized representatives of said mixed-blood group in the joint management with the tribe and in the

distribution and unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall not be subject to mortgage, pledge, hypothecation, levy, execution, attachment or other similar process, while such stock remains in the ownership of the original stockholder or his heirs or legatees, but the interest of stockholders in any distribution by such corporation shall be subject to the usual processes of the law, [The last paragraph, dealing with stock in corporations, was not part of the law at the time of the acts complained of, but was added by an amendment in 1962]

§ 677j. *Advances or expenditures from tribal funds; restrictions on mixed-blood group until adoption of plan for terminating supervision*

Notwithstanding any other provision of existing law, the tribal funds now on deposit or hereafter deposited in the United States Treasury to the credit of the tribe or either group thereof, shall be available for advance to the tribe or the respective groups, or for expenditure, for such purposes, including per capita payments, as may be designated by the Tribal Business Committee for the full-blood members, and by the authorized agents of the mixed-blood members, and in either event subject to the approval of the Secretary: *Provided*, That the aggregate amount of the expenditures and advances authorized by this section for the mixed-blood group shall not exceed 50 per centum of the total funds of said mixed-blood group after such division, until said mixed-blood group has adopted a plan approved by the Secretary for termination of Federal supervision of said mixed-blood group, as required under section 677i of this title. After such termination of Federal supervision, per capita payments to the mixed-blood group shall not be subject to approval of the Secretary.

§ 677k. *Adjustment of debts in making per capita payments to mixed-blood members; execution of mortgages on property*

Fifty per centum of all per capita payments to any individual mixed-blood member made pursuant to any division or distribution under sections 677-677aa of this title shall have deducted therefrom any sum or sums of money owed by such member to the tribe, whether due or to become due, unless in the opinion of the Secretary said debts are not adequately secured in which event the entire per capita payment shall be subject to such offset. Any other division, partition or distribution of property to any individual mixed-blood member made pursuant to sections 677-677aa of this title shall be subject to a mortgage to be made in favor of the tribe securing the payment of all sums of money owed by him to the tribe on the date of such division, partition or distribution to such individual mixed-blood member. The Secretary shall require the execution of any mortgage required under this section as a condition to any such division, partition or distribution.

§ 677l. *Distribution to individual members of mixed-blood group; preparation and approval of plan; assistance; provisions permitted in plan*

After the adoption of a plan for the division of the assets between the two groups, a plan for distribution of the assets of the mixed-blood group to the individual members thereof shall be prepared and ratified by a majority of said group, within the period of six months from such adoption and presented to the Secretary for approval. The Secretary is authorized to provide such reasonable assistance, including necessary technical service of Government employees at Fort Duchesne, Utah, and arranging for necessary consultations with representatives of Federal departments and agencies, officials of the

State of Utah and political subdivisions thereof, as may be required by the mixed-blood group in the preparation of such plan.

The plan for division of the assets among the members of the mixed-blood group may include:

(1) Complete disposition of all cash assets of said group, reserving, however, sufficient funds to cover—

(i) The proportionate share of said mixed-blood group in and to all expenses incurred in effecting the purposes of sections 677-677aa of this title, including, but not limited to, the necessary expense incurred under this section and section 677m of this title;

(ii) the just and proportionate share of the mixed-bloods in the expense incurred in the prosecution of the claims of the tribe, or the bands thereof, against the United States; and

(iii) the determinable and estimated administrative costs and expenses of any mixed-blood organization authorized by sections 677-677aa of this title, including lawful and reasonable salaries and fees of authorized agents, officers and employees of said mixed-blood group.

(2) Partition of the lands of the mixed-blood group, excepting all gas, oil, and mineral rights, to corporations, partnerships, or other legal entities, and to trustees, and the individual members of said groups, quality and quantity relatively considered, according to the respective rights and interests of the parties, located so as to embrace, as far as practicable, any improvements lawfully made by the person or persons receiving such land. The value of the improvements made, under a valid

lease or assignment from the tribe, shall be excluded from the valuation in making allotments to the lessee or assignee, and the land must be valued without regard to such improvements unless the lease or assignment, under which said improvements were made, provided that such improvements should become the property of the tribe. In the making of any partition due consideration shall be given to all of the rights and interests of the person or persons receiving the property, and all of the rights and interests of the other members of the tribe. Two or more of the members of said mixed-blood group may obtain their share of property as tenants in common, as joint tenants, or in any other lawful manner when such members agree among themselves as to the manner in which they desire to receive such title. When it appears that an equitable partition cannot be made among the members of said mixed-blood group without prejudice to the rights and interests of some of them, and yet a partition is directed by the group, the members of said group may voluntarily determine compensation to be made by one party to another on account of the inequity. In all cases where equity is agreed upon by the members of said mixed-blood group, such compensatory adjustment among the parties, according to the principles of equity, must be approved by the Secretary. In the event of a failure to agree upon an equitable compensatory adjustment among the parties the Secretary shall make such adjustment and his decision shall be final.

(3) Organization of corporations for the grazing of livestock, handling of water and water rights, and the shares therein may be issued to the members of said group in proportion to their interests in the assets of such corporations. When, in the opinion of said mixed-blood group, it is to the best interest of said group to transfer a portion of the assets of said group to a corporation or other legal entity for any purpose, the Secretary is authorized to make such transfer.

(4) A transfer of assets to one or more trustees designated by said group who shall hold title to all or any part of the property of said group for management or liquidation purposes under terms and conditions prescribed by said mixed-blood group. The Secretary is authorized to make such transfer, and approve the trustees, and the terms and conditions of the trust.

(5) Sale of any portion of the assets of said group subject to the approval of the Secretary. In addition to the sales herein otherwise authorized, authority is granted to the authorized representatives of said group to sell any property of said group when, in the opinion of the majority of said mixed-blood group, a practicable partition cannot be made, or for any other reason it is deemed to the best interests of the group, and the proceeds of such sales shall be distributed equitably among the members of said mixed-blood group, after deducting reasonable cost of sale and distribution.

§ 677m. *Same; procedure by Secretary if distribution not completed within seven years from August 27, 1954*

In the event all the tribal assets, susceptible to equitable and practicable distribution, distributed to the mixed-blood group under the provisions of section 677i of this title, are not, within seven years from August 27, 1954, distributed to the individual mixed-blood members as contemplated in the plan to be adopted in accordance with the provisions of section 677l of this title, so as to effectively terminate Federal supervision over said assets, then the Secretary shall proceed to make such distribution in a manner, in his discretion, deemed fair and equitable to all members of said group, or convey such assets to a trustee for liquidation and distribution of the net proceeds, or convey such assets to the persons entitled thereto as tenants in common.

§ 677n. *Disposal by mixed-blood members of their individual interests in tribal assets; requisites and conditions*

Any member of the mixed-blood group may dispose of his interest in the tribal assets prior to termination of Federal supervision, subject to the approval of the Secretary. In the event a member of the mixed-blood group determines to dispose of his interest in any of said real property at any time within ten years from August 27, 1954, he shall first offer it to the members of the tribe, and no sale of any interest, prior to termination of Federal supervision, shall be authorized without such offer to said members of the tribe in such form as may be approved by the Secretary. After termination of Federal supervision the requirement of such offer, in form to be approved by the Secretary, shall be a covenant to run with the land for said ten-year period, and shall be expressly provided in any patent or deed issued prior to the expiration of said period.

§ 677o. *Termination of restrictions on individually owned property of the mixed-blood group—Transfer of control of trust property; removal of sales restrictions*

(a) When any mixed-blood member of the tribe has received his distributive share of the tribal assets distributed to the mixed-blood group under the provisions of section 677i of this title, whether such distribution is made in part or in whole to a corporation, partnership, or trusteeship in which he is interested, or otherwise, the Secretary is authorized and directed to immediately transfer to him unrestricted control of all other property held in trust for such mixed-blood member by the United States, and shall further remove all restrictions on the sale or encumbrance of trust or restricted property owned by

such member of the tribe, and Federal supervision of such member and his property shall thereby be terminated, except as to his remaining interest in tribal property in the form of any unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other tribal assets not susceptible to equitable and practicable distribution, all of which shall remain subject to the terms of sections 677-677aa of this title, notwithstanding anything contained in said sections to the contrary.

Partition or sale by Secretary prior to removal of restrictions

(b) Prior to the removal of restrictions in accordance with the provisions of subsection (a) of this section on land owned by more than one person, the Secretary may—

- (1) upon request of any of the owners, partition the land and issue to each owner an unrestricted patent or deed for his individual share, unless such owner is a full-blood member of the tribe or other Indian who owns trust or restricted property, in which event a trust patent or restricted deed shall be issued and such trust may be terminated or such restrictions may be removed when the Secretary determines that the need therefor no longer exists;
- (2) upon request of any of the owners and a finding by the Secretary that partition of all or any part of the land is not practicable, cause all or any part of the land to be sold at not less than the appraised value thereof and distribute the proceeds of sale to the owners: *Provided*, That before a sale any one or more of the owners may elect to purchase the other interests in the land, or the tribe may elect to purchase the entire interest in the land, at not less than the appraised value thereof.

§ 677p. *Tax exemption; exceptions and time limits; valuation for income tax on gains or losses*

No distribution of the assets made under the provisions of sections 677-677aa of this title shall be subject to any Federal or State income tax: *Provided*, That so much of any cash distribution made under said sections as consists of a share of any interest earned on funds deposited in the Treasury of the United States shall not by virtue of said sections be exempt from individual income tax in the hands of the recipients for the year in which paid. Property distributed to the mixed-blood group pursuant to the terms of said sections shall be exempt from property taxes for a period of seven years from August 27, 1954, unless the original distributee parts with title thereto, either by deed, descent, succession, foreclosure of mortgage, sheriff's sale or other conveyance; *Provided*, That the mortgaging, hypothecation, granting of a right-of-way, or other similar encumbrance of said property shall not be construed as a conveyance subjecting said property to taxation under the provisions of this section. After seven years from August 27, 1954, all property distributed to the mixed-blood members of the tribe under the provisions of sections 677-677aa of this title, and all income derived therefrom by the individual, corporation, or other legal entity, shall be subject to the same taxes, State and Federal, as in the case of non-Indians; except that any corporation organized by the mixed-blood members for the purpose of aiding in the joint management with the tribe and in the distribution of unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall not be subject to corporate income taxes. Any valuation for purposes of Federal income tax on gains or losses shall take as the basis of the particular taxpayer the value of the property on the date title is transferred by the United States pursuant to said sections. [Provisions respecting exemp-

tion from corporate income taxes were not part of the original Act, but were added later by amendment.]

§ 677q. *Applicability of decedents' estates laws to individual trust property of mixed-blood members*

The laws of the United States with respect to probate of wills, determination of heirship, and the administration of estates shall apply to the individual trust property of mixed-blood members of the tribe until Federal supervision is terminated. Thereafter, the laws of the several States, Territories, possessions, and the District of Columbia within which such mixed-blood members reside at the time of their death shall apply.

§ 677r. *Indian claims unaffected*

Nothing in sections 677-677aa of this title shall affect any claim heretofore filed against the United States by the tribe, or the individual bands comprising the tribe.

§ 677s. *Valid leases, permits, liens, etc., unaffected*

Nothing in sections 677-677aa of this title shall abrogate any valid lease, permit, license, right-of-way, lien, or other contract heretofore approved.

§ 677t. *Water rights*

Nothing in sections 677-677aa of this title shall abrogate any water rights of the tribe or its members.

§ 677u. *Protection of minors, persons non compos mentis, and other members needing assistance; guardians*

For the purposes of sections 677-677aa of this title, the Secretary shall protect the rights of members of the tribe who

are minors, non compos mentis, or, in the opinion of the Secretary, in need of assistance in conducting their affairs, by such means as he may deem adequate, but appointment of guardians pursuant to State laws, in any case, shall not be required until Federal supervision has terminated.

§ 677v. *Termination of Federal trust; publication; termination of Federal services; application of Federal and State laws*

Upon removal of Federal restrictions on the property of each individual mixed-blood member of the tribe, the Secretary shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to such individual is terminated. Thereafter, such individual shall not be entitled to any of the services performed for Indians because of his status as an Indian. All statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to such member over which supervision has been terminated, and the laws of the several States shall apply to such member in the same manner as they apply to other citizens within their jurisdiction.

§ 677w. *Presentation of development program for full-blood group to eventually terminate Federal supervision; annual progress reports*

Within three months after August 27, 1954, the business committee of the tribe representing the full-blood group thereof shall present to the Secretary a development program calculated to assist in making the tribe and the members thereof self-supporting, without any special Government assistance, with a view of eventually terminating all Federal supervision of the tribe and its members. The tribal business committee, repre-

senting the full-blood group shall, through the Secretary of the Interior, make a full and complete annual progress report to the Congress of its activities, and of the expenditures authorized under sections 677-677aa of this title.

§ 677x. *Citizenship status unaffected*

Nothing in sections 677-677aa of this title, shall affect the status of the members of the tribe as citizens of the United States.

§ 677y. *Execution by Secretary of patents, deeds, etc.*

The Secretary shall have authority to execute such patents, deeds, assignments, releases, certificates, contracts, and other instruments, as may be necessary or appropriate to carry out the provisions of sections 677-677aa of this title, or to establish a marketable and recordable title to any property disposed of pursuant to said sections.

§ 677z. *Rules and regulations; tribal or group referenda*

The Secretary is authorized to issue rules and regulations necessary to effectuate the purposes of sections 677-677aa of this title, and may, in his discretion, provide for tribal or group referenda on matters pertaining to management or disposition of tribal or group assets.

§ 677aa. *Procedure by Secretary upon non-agreement between mixed-blood and full-blood groups*

Whenever any action pursuant to the provisions of sections 677-677aa of this title requires the agreement of the mixed-blood and full-blood groups and such agreement cannot be reached, the Secretary is authorized to proceed in any manner deemed by him to be in the best interests of both groups.

APPENDIX E

REGULATIONS UNDER THE TERMINATION ACT

(25 C.F.R. Part 243)

Section 243.2 *Definitions:* As used in this part:

• • •

(c) "Member of the Tribe" means all mixed-blood and full-blood members as defined in (a) and (b) of this section.

• • •

(f) "Tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah.

• • •

(h) "Termination of Federal supervision" means termination of Federal supervision over the particular real estate involved by the issuance of a patent in fee or other similar title document, and does not mean termination of the wardship relationship between the Indian and the United States on the occasion of the issuance of a so-called "Termination Proclamation" (25 U.S.C. 677v).

Section 243.5 *Offer.* Any mixed-blood member of the tribe desiring to dispose of his interest in real property, as herein defined, prior to termination of Federal supervision over such property, must notify the Superintendent of his desire to dispose thereof, and shall state the price and terms upon which the land is offered for sale or which constitute a bona fide offer to purchase.

Section 243.6 *Notice of offer.* The Superintendent shall notify in writing the corporations and the tribal business com-

mittee of the tribe of any offer of sale, and shall post notices of the offer of sale in a conspicuous place in the Uintah and Ouray Agency Office at Fort Duchesne and in the Post Offices of the towns of Roosevelt, Whiterocks, Randelett, Myton, and Fort Duchesne, Utah, for a period of at least ten days. The notices shall specifically describe the terms upon which such sale is to be made and the final date for acceptance of offer from members of the tribe by submission of an appropriate bid.

Section 243.7 *Acceptance of offer.* Upon receipt of an acceptance of the offering from any member of the tribe to purchase such land, the Superintendent shall immediately notify the mixed-blood member making the offer to sell such land and the sale may be completed in accordance with the offer and acceptance. In the event two or more members of the tribe submit an acceptance of the seller's offer, the Superintendent shall call for sealed bids from the parties submitting such acceptances and the sale shall be made to the highest bidder provided the highest bid equals or exceeds the seller's offering price.

Section 243.8 *Certificate of non-acceptance.* If no acceptance is made by a member of the tribe to purchase such land, the Superintendent shall notify the mixed-blood member making such offer that no member of the tribe has accepted the offer to sell and the mixed-blood member may then sell such land at any time within six months thereafter to any person at the same or greater price and upon the same terms and conditions upon which it was offered to the members. The Superintendent shall furnish to such purchaser a certificate, properly acknowledged for recording, certifying that a proper offer at a price and on terms specified in the certificate was made to members of the tribe in accordance with law and the regulations of the Secretary.

Section 243.9 *Re-offer.* If no sale is made, within a six months' period after the seller has been so notified by the Superintendent, then a new offer must be made to the members of the tribe in the manner set forth in section 243.5.

Section 243.10 *Subsequent sale.* If, for any reason, a sale should not be consummated after an acceptance by a member of the tribe, as provided in section 243.7, a new offer to sell shall be made to the members of the tribe in the manner set forth in section 243.5.

Section 243.12 *Sale of stock in the corporations.* In the event any stockholder of the corporation determines to sell or dispose of any stock owned by him in any of the corporations prior to August 27, 1964, he shall first offer it to the members of the tribe in accordance with the provisions set forth in the Articles of Incorporation and in the certificate of stock of such corporation and in the manner provided in §§ 243.5 through 243.10, as far as practicable.

APPENDIX F

PERTINENT PROVISIONS OF THE SECURITIES EXCHANGE ACT OF 1934 (15 U.S.C. §§ 78a, et seq.) AND REGULATIONS ADOPTED THEREUNDER

15 U.S.C. § 78j:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

• • •

To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Rule 10b-5 (17 C.F.R. 240.10b-5):

"It shall be unlawful for any person, directly or indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,

"(a) to employ any device, scheme, or artifice to defraud,

"(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

"(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security."

15 U.S.C. § 78cc:

Every contract made in violation of any provision of this title or of any rule or regulation thereunder, and every contract (including any contract for listing a security on an exchange) heretofore or hereafter made the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this title or any rule or regulation thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, or regulation, shall have made or engaged in the performance of such contract, and (2) as regards the rights of any person who not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule or regulation . . .

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IN THE SUPREME COURT OF THE UNITED STATES

AFFILIATED UTE CITIZENS OF
THE STATE OF UTAH, et al,

Petitioners,

vs.

UNITED STATES OF
AMERICA,

Respondent.

ANITA REYOS, et al,
Petitioners,

vs.

FIRST SECURITY BANK OF UTAH,
N.A., UNITED STATES OF
AMERICA, JOHN B. GALE AND
VERL HASLEM,

Respondents.

70-78

No. ~~1991~~

October Term,
1970

BRIEF OF RESPONDENT VERL HASLEM
OPPOSING PETITION FOR WRIT OF
CERTIORARI

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BRIEF OF RESPONDENT VERL HASLEM OPPOSING PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

This brief is submitted on behalf of respondent Verl Haslem in opposition to the Petition of the Affiliated Ute Citizens of the State of Utah and Anita Reyos, et al for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

In actuality, the petitioners have joined together for this purpose two separate and distinct cases, only one of

which pertains to Haslem. The first case, *Affiliated Ute Citizens of the State of Utah v. the United States of America* (431 F.2d 1349 (1970)) (herein "the AUC case") seeks the remedy of having certain properties distributed pro rata to the individual mixed blood members of the Ute Indian Tribe rather than to a corporation formed to receive it. The second case, *Anita Reyos, et al v. First Security Bank of Utah, N. A., the United States of America; John B. Gale and Verl Haslem* (431 F.2d 1337 (1970)) (herein "the Reyos case") claims damages on behalf of certain enumerated mixed bloods. That case is in reality divided into three claims: The first is a claim against the United States under the federal Tort Claims Act 28 U. S. C. § 1346 (b)) by which plaintiffs say that the government negligently failed to protect the mixed bloods in breach of an alleged duty to do so; the second is a claim against the bank for breach of an alleged fiduciary relationship; and the third consists of claims against the bank, Haslem and Gale based upon an alleged violation of Sec. 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 78j(b)) and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission (17 CFR 240.10b-5).

In the AUC case it is claimed by the petitioners that the Termination Act (68 Stat. 868, 25 U.S.C. §§677-677aa), under which the United States government's obligation to oversee the welfare of the affected plaintiffs is delineated, has been improperly administered. It appears from the opinion of the Court of Appeals that that case was dismissed for lack of jurisdiction in that the Trial Court had apparently so ruled and the Court of Appeals affirmed. The issues presented in that case, whatever they may be, have no bearing on the bank, Gale or Haslem; we

wish to note that Haslem takes no position with respect to the Petition for Writ of Certiorari in the AUC case.

Petitioners in the Reyos case claim that the Termination Act, *supra*, also created a duty in the United States with respect to the sale of stock in the Ute Distribution Corporation by the mixed bloods, the claimed breach of which is actionable under the Tort Claims Act. The Court of Appeals held that the Termination Act created no such duty.

Petitioners in the Reyos case also claim that because the bank was a trustee for certain named mixed bloods and also acted as transfer agent for the stock of the Ute Distribution Corporation, the bank owed a fiduciary duty to all of the mixed bloods as well, which duty the bank breached. The Court of Appeals disagreed and ruled that the bank owed no duty by virtue of those agreements except the express duties created by their terms (431 F. 2d 1337 at 1344-45).

Finally, the last claim, against the bank and the individual defendants, the only claim presented against this Respondent, is predicated upon charges of conspiracy and violations of the securities law as above noted. As to those claims, the Court of Appeals has ruled that the evidence does not support a finding of conspiracy and has remanded the proceedings to the United States District Court for the District of Utah to determine, among other things, the extent, if any, of the individuals' liability for violation of the securities laws. Such liability was properly limited to the impact of the defendants' own actions and the Court of Appeals did not allow defendants' liability to be expanded to encompass all sales of stock by the mixed bloods, whether or not the individuals were involved in that particular transaction.

ARGUMENT

It is difficult to see how the Appellate Court's straight-forward analysis of the evidence presented on these issues comes within any of the criteria enumerated in this Court's Rule 19 1 (b).

Petitioners have claimed with respect to the alleged securities violation that this case is one of "National concern" because the Court of Appeals "has chosen to circumscribe the scope of liability under Rule 10b-5 without an inquiry into whether the substance of the transaction is within the policies Congress declared in adopting the securities laws." Petition page 24.

This claim is wholly without merit. The Court of Appeals held that the individuals and the bank might be liable under the securities laws but only for those transactions in which it could be shown that they were involved. This was so because the court found that there was no evidence of a conspiracy but that there was an indication that the defendants might be liable for isolated instances of conduct. Though petitioners state otherwise, there was no suggestion whatever in the Court's opinion, articulated or otherwise, that in an appropriate case banking transactions would not be covered by the Securities Exchange Act of 1934. The Court simply held that the standard by which a violation of the securities laws as opposed to laws directly related to Indian affairs should be measured is no different in the event parties are Indians or mixed bloods than otherwise.

Insofar as the position of the bank and the individual defendants are concerned, the Court of Appeals' opinion is a straightforward lawyer-like ruling disposing of the issues as tried and is of little or no national moment. The

issues do not bring into play any question of national import not previously determined, the rulings of the Court of Appeals in the Reyes case are not in conflict with any rulings of any other Court of Appeals in any material respect and the case does not meet any of the other criteria for granting a Writ of Certiorari as set forth in this Court's rules.

CONCLUSION

Based on the foregoing, it is submitted that the Petition for Writ of Certiorari, at least in the Reyes case, should be denied because none of the required elements presented by it are of a sufficient concern to occupy the energy of this Court. If the Petition is granted, at all, it is clear that the issues should be limited solely to those pertaining to the meaning and application of the Termination Act.

Respectfully submitted,

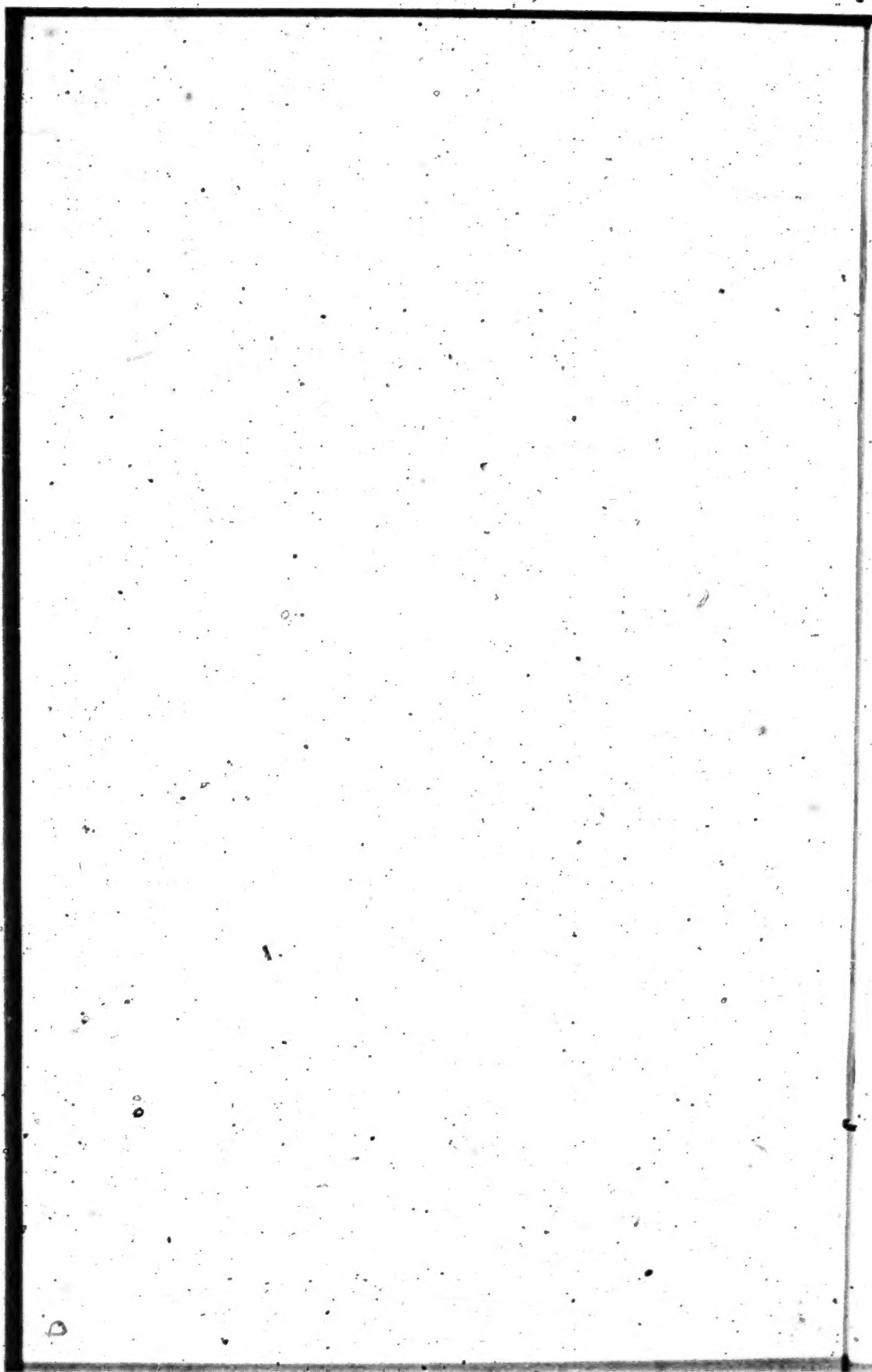
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In the Supreme Court of the United States

October Term, 1970

No. ~~1931~~

70-78

**AFFILIATED UTE CITIZENS OF THE
STATE OF UTAH**, an unincorporated association
formed by and under the supervision of the Secretary
of the Department of the Interior pursuant to Public
Law 83-671 (25 U.S.C. §§ 677-677aa) composed of
490 so-called "mixed-blood" members of the Ute In-
dian Tribe of the Uintah and Ouray Reservation,
Utah, suing on its own behalf and as representative
for and on behalf of its 490 members and their heirs
and legal representatives as a class; and the 490 so-
called "mixed-blood" members of the Ute Indian
Tribe of the Uintah and Ouray Reservation, Utah, in-
dividually and as an identifiable Indian group or
band,

vs.

Petitioners,

UNITED STATES OF AMERICA,

Respondents.

ANITA REYOS, et al.,

Petitioners,

vs.

**FIRST SECURITY BANK OF UTAH, N.A.,
UNITED STATES OF AMERICA, JOHN B.
GALE AND VERL HASLEM,**

Respondents.

**BRIEF OF FIRST SECURITY BANK OF
UTAH, N.A. IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI**

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In the Supreme Court of the United States

October Term, 1970

No. 1331

AFFILIATED UTE CITIZENS OF THE STATE OF UTAH, an unincorporated association formed by and under the supervision of the Secretary of the Department of the Interior pursuant to Public Law 83-671 (25 U.S.C. §§ 677-677aa) composed of 490 so-called "mixed-blood" members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, suing on its own behalf and as representative for and on behalf of its 490 members and their heirs and legal representatives as a class; and the 490 so-called "mixed-blood" members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, individually and as an identifiable Indian group or band,

vs.

Petitioners,

UNITED STATES OF AMERICA, *Respondents.*

ANITA REYOS, et al.,

Petitioners,

vs.

FIRST SECURITY BANK OF UTAH, N.A., UNITED STATES OF AMERICA, JOHN B. GALE AND VERL HASLEM, *Respondents.*

BRIEF OF FIRST SECURITY BANK OF UTAH, N.A. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

Petitioners' statement of the case is inadequate and inaccurate and cannot be patched up piecemeal. This de-

fendant, First Security Bank of Utah, N.A., prefers to state the case as it involves this defendant in the language of the opinion of the United States Court of Appeals, Tenth Circuit, in the case of *Reynos v. United States*, et al, 431 F.2d 1337.

"SETH, Circuit Judge.

"These suits were commenced by eighty-five individuals with whom the United States originally had full trust relationship as Indians of the Tribe of the Uintah and Ouray Reservation in Utah. Of this group of plaintiffs twelve individuals were selected by the parties as the ones whose cases would be tried first as test cases. These are referred to as the 'designated' plaintiffs and are the appellees herein.

"An Act of Congress directed that the federal trust relationship with the mixed-bloods of the Tribe be terminated, and the tribal property be divided between the mixed-blood and the full-blood groups. This is referred to as 'termination.' All plaintiffs belonged to the group of some 490 individuals designated by statute as the mixed-bloods of the Tribe.

"The termination statute (68 Stat. 868, 25 U.S.C. §§ 677-677aa) permitted the mixed-blood group to form associations or corporations to handle some of the property difficult or impossible to distribute to individuals which was allocated to the mixed-blood group, and for matters of general concern to this group. One such corporation so formed was the Ute Distribution Corporation, the stock of which and the stockholders are concerned in these suits.

"One type of property which the termination statute stated was not to be distributed to individuals was the gas, oil and mineral interests. Upon division of the tribal property, a portion

thereof in undivided interests was allocated to the mixed-blood group. The Ute Distribution Corporation was organized to 'handle' this interest of the mixed-bloods jointly with the Tribal Committee which had authority over the full-bloods' share. It was also organized to distribute the group's portion of unliquidated claims against the United States.

"Ten shares of stock in the UDC were issued to each person in the mixed-blood group, and distributions or dividends were paid to the stockholders from time to time. The defendant bank entered into a contract with this corporation to act as transfer agent and to provide to it some record keeping and related services. In addition, the bank, under the termination statute, was authorized to act as trustee of express trusts for mixed-bloods who, in the opinion of the Secretary of the Interior, needed such help.

"The individual defendants Gale and Haslem were assistant managers of a facility of the bank located in an area where a number of the mixed-bloods lived, and who dealt directly with some of the plaintiffs in the sale or transfer of their stock.

"The plaintiffs were stockholders of the UDC who sold shares of their stock to non-Indians. The bank facilities and services were used in connection with these sales or some of them. The causes of action against the bank alleged a breach of the bank's duty arising from the agreement with the UDC and from its participation in the sales of stock. The action against the bank is also based on Regulation 10b-5 of the Securities and Exchange Commission. The causes alleged against the individual defendants Gale and Haslem are based solely on this Regulation.

"Some time after these suits were filed the complaints were amended to include a cause of action against the United States under the Tort

Claims Act. This cause alleged a breach of duty by the Secretary of the Interior and the local officials of the Bureau of Indian Affairs in connection with the transfer of the shares of stock.

"The trial court, in some one hundred pages of findings and conclusions, found the defendant bank and defendants Gale and Haslem liable for damages to each of the twelve plaintiffs whose cases were selected as test cases for all sales made by them. The United States was found liable only as to some of the plaintiffs. The trial court used the figure of \$1500 per share as a value for computing damages.

* * *

"Of particular significance to the issues on this appeal is a provision in the termination statute giving the right to the mixed-blood members to dispose of property they received by distribution. This section states:

"Any member of the mixed-blood group may dispose of his interest in the tribal assets prior to termination of Federal supervision, subject to the approval of the Secretary. In the event a member of the mixed-blood group determines to dispose of his interest in any of said real property at any time within ten years from August 27, 1954, he shall first offer it to the members of the tribe, and no sale of any interest, prior to termination of Federal supervision, shall be authorized without such offer to said members of the tribe in such form as may be approved by the Secretary. After termination of Federal supervision the requirement of such offer, in form to be approved by the Secretary, shall be a covenant to run with the land for said ten-year period, and shall be expressly provided in any patent or deed issued prior to the expiration of said period.' (25 U.S.C. § 677n).

"See also the Secretary's Regulations at 25 C.F.R. § 243.8.

"The essential elements of the quoted section were incorporated in the Articles of Incorporation of the Ute Distribution Corporation to govern the sale of the corporate shares. Thus in the event that a stockholder of the Ute Distribution Corporation desired to sell his stock before August 27, 1964, it was necessary that it first be offered for sale at a stated price to the Tribe or to the members of the Tribe. The procedures and the documents necessary to carry out this provision were arranged for and agreed upon by the local representative of the Bureau of Indian Affairs, by the defendant bank as transfer agent, and by the UDC.

"Much of the testimony during the trial concerned the execution and delivery of various documents which were required to carry out this requirement of the corporate charter. This provision can best be referred to as a right of refusal in the members of the Tribe or the Tribe. It expired on August 27, 1964.

* * *

"The legal relationships and the business relationships between the plaintiffs and the defendant bank, and with the Ute Distribution Corporation were determined basically and initially by the contract which had been entered into between the bank and the UDC. This agreement was modified somewhat from time to time in practice. The contract was entered into in 1958, but the principal issues with which we are concerned took place in the years 1963, 1964, and 1965.

"The principal purpose of the contract between the bank and the UDC was to have the bank provide stock transfer services, to do the corporate record keeping, the corporate accounting, and handle distributions or dividends.

"Of particular consequence in this case was the provision that the bank would act as stock transfer

agent for the corporation, and would also assist the corporation in the conduct of its business. The record indicates that it was expected that the bank in the performance of its duties would also accommodate or provide stock transfer services for the individual stockholders of the corporation. This was demonstrated by the fact that the bank was to provide facilities and personnel at Roosevelt, Utah, in an area where many mixed-bloods resided, in order to accommodate transfers of stock. The trial court found that the Roosevelt office of the bank was maintained in part " * * * for the purpose of facilitating and assisting mixed-bloods in the transfer of Ute Distribution Corporation stock. * * *"

"It is apparent that the transfers of stock of this particular corporation would be somewhat complicated by the existence of the right of refusal in the members of the Tribe, which has been hereinabove described. As indicated, this right of refusal necessitated the creation of forms which would demonstrate that the right of refusal had been complied with in order that the bank could proceed with its customary duties as transfer agent.

"The contract provided for direct compensation to the bank as transfer agent. It is also apparent from the record that the bank was seeking individual accounts from the tribal members and others. It must be assumed that the parties contemplated the usual notary fees and other ordinary fees incident to the transfers of shares.

* * *

"The stock transfer contract contained no provision whereby the bank was to discourage stockholders from selling or transferring their shares; instead the procedure which was established was to facilitate such transfers and located at a place convenient to prospective transferees.

“As the contract was put into practice, the bank retained the stock certificates of the individuals, and the transfers were handled by stock powers in the usual way. The record shows that the certificates were so retained by the bank in order to prevent their loss by the individual stockholders with the attendant problems to the corporation and the transfer agent in replacing lost certificates. As will be hereinafter mentioned, the stock certificates bore a warning or admonition to the owners to be careful in selling them as they were of undetermined value. Since the stockholders did not have possession of the certificates, they did not have an opportunity to read this warning.

* * *

“It would appear that the trial court placed considerable reliance in reaching its conclusion on the asserted inaccuracies in the affidavits executed by the plaintiffs concerning their ultimate sales of the shares. However, the bank or the government had no duty as to these plaintiffs to see that they executed affidavits that reflected the true transaction. Furthermore the affidavits were executed in connection with the right of refusal in which, as indicated above, the defendants had no interest. It is difficult to see how they can complain of inaccuracies in their own affidavits.”

ARGUMENT

Pursuant to the provisions of Rule 19 of the rules of this Court, this defendant submits that petitioner's petition for certiorari should be denied on the following grounds:

I. The decision of the Tenth Circuit is not in conflict with the decision of any other circuit.

II. The Circuit did not decide an important question of federal law involving the securities laws "which has not been but should be settled by this Court."

III. The decision of the Tenth Circuit is not in conflict with any applicable decision of this Court.

IV. The Circuit has not "... so departed from the accepted and usual course of judicial proceedings ... as to call for an exercise of this Court's power of supervision."

V. There is no other reason for the Court to exercise its discretion in favor of entertaining consideration of this petition for certiorari.

I. THE DECISION OF THE TENTH CIRCUIT IS NOT IN CONFLICT WITH THE DECISION OF ANY OTHER CIRCUIT.

The petitioners' brief does not reveal any such conflict. Petitioners' brief implies that the Court ignored *Kardon v. National Gypsum Co.*, 73 F.Supp. 798 (E.D. Penn. 1947) which holds that "10b-5 creates a duty in a securities transaction" giving rise to a civil action.

Nowhere in *Reynos v. United States*, et al, does the Court ignore or deny that elementary principle. On the contrary, on page 1347 of the opinion, the Court cites a long string of cases demonstrating its acknowledgement of the fact that 10b-5 does give rise to a civil action.

What the Tenth Circuit determined was that the Bank simply did not violate 10b-5.

Consequently, the *Kardon* case represents no conflict with the *Reynos* case.

In a second attempt to show a conflict as between circuits, petitioners' brief states on page 25:

"The Court of Appeals conclusion that performance of ministerial banking functions by the bank officers is not a 'participation' of the type contemplated by the statute and Rule is squarely in conflict with the Court of Appeals for the Seventh Circuit decision in *Carroll v. First National Bank*, 413 F.2d 353 (7th Cir. 1969) cert. denied 396 U.S. 1003."

Respondent submits that the *Carroll* case is in no sense analogous to the case at bar. In that case the plaintiffs were securities dealers. The issue was whether or not a cause of action under 10b-5 had been stated in a complaint against the defendant bank. According to the Court, the allegations of the complaint were as follows:

"The amended complaint charges that the Bank was a 'main participant' in a scheme or conspiracy to defraud plaintiff securities dealers 'in connection with the purchase and sale of securities' by means of materially false representations, untrue statements of material facts, and the making of misleading statements. Of the 23 individual defendants presently in the case, five were officers or directors of the Bank and two were employees of plaintiffs. All seven were described as main participants."

The twenty-three individual defendants made certain purchases of stock and the Court goes on to say in its opinion:

"The purchases were C.O.D., requiring full cash payment only upon delivery of the securities to the bank designated by the purchaser, in this case the defendant Bank. The amended complaint alleges that as the relevant settlement drafts were directed to the Bank, the Bank 'received and held

[each of] the drafts and accompanying securities, without paying the draft or returning it, for as long as possible.' If the Bank were questioned about non-payment, the Bank, its officers and two defendant employees of the Bank 'obtained additional time by making statements and giving assurances that arrangements for payment were unavoidably delayed or were in progress, and that payment would be forthcoming,' even though these statements were untrue and misleading. Other purported wrongdoing of the Bank, its officers and certain of its employees is detailed in the amended complaint.

"Finally, the Bank, its chairman, its president, one of its vice presidents, and one of its assistant vice presidents are said to have assisted two of plaintiffs' employees, now defendants, in this scheme by arranging for persons other than the designated customers to pay the drafts and purchase the securities, without the knowledge of plaintiffs, in order to conceal the participants' inability to finance the purchase orders which they placed. It is alleged that the scheme collapsed in a declining market for the accumulated securities, resulting in an inability to prolong the shoestring purchases. In May 1966, the plaintiffs discovered that the Bank was holding a large number of uncollectible drafts drawn by plaintiffs and payable at the Bank for purchases of securities from plaintiffs on behalf of participants in the scheme. The uncollectibility of these drafts is said to have resulted in large losses to Link and the insolvency of Siegler."

On page 357, the Court held as follows:

"We have recently reiterated that frauds 'in connection with' sales of securities are sufficient to invoke the jurisdiction of the 1934 Act and Rule 10b-5 (*Buttrey v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 410 F.2d 135 (7th Cir.

1969) so that the Bank's participation in this credit bubble fraud sufficiently states a claim against it under Section 10(b) and Rule 10b15. Although the Bank may have neither bought nor sold securities for its own account, it was in a unique position to obtain the necessary time during which it was hoped that the value in the purchased securities would rise sufficiently to allow the participants in the scheme to use them in financing still further purchases. Moreover, as alleged in the amended complaint, the Bank was able to conceal the precarious nature of the speculative purchases by arranging for undisclosed or fictitious persons to bail out certain overdue transactions. Since the Bank was charged with being an aider and abettor in the fraud, it must now meet the merits of that charge."

Obviously the facts alleged in that case bear no relationship whatsoever to those found in the case at bar. According to the complaint, top bank officers, acting as bank officers in the scope of their employment, actively and knowingly participated in a scheme to defraud, to wit, a scheme to create a "credit bubble" which the bank's officers and friends could use to turn a quick profit. That case did not involve ministerial functions, but deliberate connivance to accomplish a fraudulent end.

The Tenth Circuit did not hold that 10b-5 does not apply to banking institutions. It merely held that the defendant bank did not violate 10b-5. Consequently, the *Carroll* case does not constitute any conflict between circuits.

Petitioners' counsel in his brief contends that the Bank was in the position of a fiduciary to the stockholders of Ute Distribution Corporation, even though the Bank was only a transfer agent and at most "business

advisor" to the Ute Distribution Corporation. Counsel further alleges that the Tenth Circuit in failing to find that fiduciary relationship in the *Reynos* case rendered a decision inconsistent with the decisions of other circuits.

In an attempt to demonstrate inconsistency, petitioners' brief cites *Securities and Exchange Com'n v. Texas Gulf Sulphur Co.*, 401 F.2d 833 (2nd Cir. 1968). That case is one involving misconduct in connection with purchase and sale of stock of a corporation perpetrated by "insiders." That case is obviously not analogous in any sense. Of course, directors and officers of the Ute Distribution Corporation would have been fiduciaries to the mixed-blood stockholders, but the defendant bank was not an officer or director of the Ute Distribution Corporation and neither were any of the Bank's agents or employees. Accordingly, there is no conflict posed by the *Texas Gulf Sulphur* case.

Petitioners' counsel also cites *Kohler v. Kohler*, 319 F.2d 634 (7th Cir. 1964), purportedly to indicate a conflict on the fiduciary issue.

This is a strange case for petitioners to cite inasmuch as its holding, to the limited extent that it is analogous, is favorable to the bank. In that case:

"Plaintiff sought damages arising out of a sale of Kohler Co. common stock which he sold to the company for \$115 per share on February 20, 1953. In his complaint plaintiff alleged that he was induced to sell his stock by 'misrepresentation, half truths, and omissions' of defendants and as a result sold his stock for at least \$10 per share less than its 'actual' or 'fair market' value. He contended that defendants violated Section 10 (b) of the Securities Exchange Act of 1934, 15

U.S.C. § 78j(b), and Rule X-10b-5 of the Securities and Exchange Commission, 17 C.F.R. 240.10b-5, in that their conduct constituted a breach of their duties as 'fiduciaries' and 'insiders' to fully and accurately disclose all facts material to the value of his Kohler Co. stock."

The court held that there was no breach of duty on the part of an accountant retained to negotiate the sale of stock in failing to volunteer details of a pension plan or of an accounting method of how annuities funding was treated on the books, even though a different method, if adopted, would have increased the book value of the company. In that case then, the Court did not find a fiduciary relationship so there was certainly no conflict between that case and the *Reynos* case.

Petitioners attempt to demonstrate a conflict between the Tenth Circuit and the Second Circuit on the issue of privity by citing again the *Texas Gulf Sulphur* case. Petitioners incorrectly contend that the Tenth Circuit decision required privity in order to sustain liability. The Tenth Circuit decision was not based on the issue of lack of privity at all. It was based on a simple lack of duty of the bank officer to become an investment advisor to a stockholder when all he was doing was notarizing an affidavit or guaranteeing a signature.

Under the "Privity" subheading of petitioners' brief, counsel quotes from the *Texas Gulf Sulphur* case again and his quote reveals the inapplicability of that case. The quote is:

"Congress when it used to phrase 'in connection with the purchase or sale of any security' intended only that the device employed, whatever it might be, be of a sort that would cause reasonable in-

vestors to rely thereon, and, in connection therewith, so relying, cause them to purchase or sell a corporation's securities."

The problem involved in the *Texas Gulf Sulphur* case was centered upon the newspaper publication of misleading information regarding certain exploration activities of the corporation. In that case the Court further said:

"... When materially misleading corporate statements or deceptive insider activities have been uncovered, courts should broadly construe phrase 'in connection with purchase or sale of any security' ..."

The Court in the *Texas Gulf Sulphur* case is talking about reliance on false representations. There is no evidence anywhere in the *Reynos* case that the petitioners relied on any representations, misleading, false or otherwise, made by Bank's agents in connection with the purchase and sale of the stock. The trial court's Findings of Fact do not set forth any false representations on the part of Gale or Haslem, the Bank's assistant managers in Roosevelt. The worst that is attributed to them is a nondisclosure of the price at which the stock could have been sold to other buyers.

It is clear that the Tenth Circuit decision was not based on the finding of lack of "privity" because it is recognized by the Court that defendants Gale and Haslem, officers of the Bank, *were* buyers for themselves, so if their conduct was attributable to the Bank on the theory of respondeat superior, as the Court found, there *was* privity with respect to the shares purchased by Gale and Haslem, and therefore the Circuit could not rule that "no privity" meant "no liability."

For that reason also the other two cases cited by petitioners supporting his privity in conflict point, *Brennan v. Midwestern United Life Insurance Co.*, 415 F.2d 147 (7th Cir. 1969) and *Buttry v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 410 F.2d 135 (7th Cir. 1969) are likewise not applicable.

II. THE CIRCUIT DID NOT DECIDE AN IMPORTANT QUESTION OF FEDERAL LAW INVOLVING THE SECURITIES LAWS "WHICH HAS NOT BEEN BUT SHOULD BE SETTLED BY THIS COURT."

Petitioners' brief does not purport to prove that the Tenth Circuit in the *Reynos* case decided any important question of federal law which has not been but should be settled by this Court.

III. THE DECISION OF THE TENTH CIRCUIT IS NOT IN CONFLICT WITH ANY APPLICABLE DECISION OF THIS COURT.

Petitioners' counsel complains that the Circuit failed to find the Bank a fiduciary and claims that it should have in light of this Court's ruling in *Securities and Exchange Commission v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963). *The Capital Gains Research* case is not analogous to the *Reynos* case and does not present any conflict. According to this Court's summary, the *Capital Gains Research* case was an action by the Securities and Exchange Commission "to obtain an injunction compelling a registered investment advisor to disclose to his clients a practice of purchasing shares of

security for his own account shortly before recommending that security for long term investment and then immediately selling the shares at a profit upon the rise in the market price following the recommendation. The action was based on § 206(2) of the Investment Advisers Act (15 USC § 80b-6(2)), prohibiting an investment adviser from engaging in any practice which 'operates as a fraud or deceit upon any client or prospective client.'"

The petitioners, by the argument in this section of their brief, ask the Court to find a transfer agent (Bank) of a corporation (Ute Distribution Corporation) to be a fiduciary of the individual stockholders of the corporation to such an extent that the transfer agent was not supposed to transfer shares of stock until it had ascertained that the stockholder had received a fair price. Trying to make a transfer agent a guardian of a stockholder to see that he gets a fair price is certainly not analogous to preventing an investment advisor from deceiving his client. Trying to make a stock transfer agent-stockholder relationship analogous to an investment advisor-client relationship is specious.

IV. THE CIRCUIT HAS NOT "... SO DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS ... AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION."

The petitioners' brief does not purport to set forth any arguments to the effect that the Tenth Circuit "so departed."

V. THERE IS NO OTHER REASON FOR THE COURT TO EXERCISE ITS DISCRETION IN FAVOR OF ENTERTAINING CONSIDERATION OF THIS PETITION FOR CERTIORARI.

So ar as the writer is able to ascertain, the petitioners do not set forth any grounds justifying certiorari other than those discussed above.

CONCLUSION

For the reasons stated above, petitioners' request for certiorari should be denied.

Respectfully submitted

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. ~~1881~~

70-78

Supreme Court, U.S.
FILED

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AFFILIATED UTE CITIZENS OF THE STATE OF

UTAH, an unincorporated association formed by and under the supervision of the Secretary of the Department of the Interior pursuant to Public Law 83-671 (25 U.S.C. §§ 677-677aa) composed of 490 so-called "mixed-blood" members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, suing on its own behalf and as representative for and on behalf of its 490 members and their heirs and legal representatives as a class; and the 490 so-called "mixed-blood" members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, individually and as an identifiable Indian group or band,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondents.

ANITA REYOS, et al.,

Petitioners,

vs.

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Respondents.

BRIEF OF JOHN B. GALE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE TENTH CIRCUIT

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. 1331

AFFILIATED UTE CITIZENS OF THE STATE OF UTAH, an unincorporated association formed by and under the supervision of the Secretary of the Department of the Interior pursuant to Public Law 83-671 (25 U.S.C. §§ 677-677aa) composed of 490 so-called "mixed-blood" members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, suing on its own behalf and as representative for and on behalf of its 490 members and their heirs and legal representatives as a class; and the 490 so-called "mixed-blood" members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, individually and as an identifiable Indian group or band,

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Respondents.

BRIEF OF JOHN B. GALE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE TENTH CIRCUIT

Respondent John B. Gale ("Gale" herein), defendant and appellant in the courts below, prays that the petition for writ of certiorari to review the United States Court of Appeals of the Tenth Circuit as it applies to the respondent Gale be denied.

STATEMENT OF THE CASE

The statement of the case as set forth in the petition for writ of certiorari fails to clearly set forth the facts as they relate to the respondent Gale. The following statements quoted directly from the opinion of Judge Seth present the facts in a very objective manner which the respondent Gale adopts as his statement of the case.

The only cause of action alleged against the individual defendants Gale and Haslem is based upon the violation of Regulation 10b-5 of the Securities and Exchange Commission (17 C.F.R. § 240.10b-5). This regulation was promulgated under the authority of section 10 (b) of the 1934 Securities and Exchange Act. This cause of action is also asserted against the defendant bank. Each plaintiff states a separate cause against each of such defendants.

The record shows that the defendant Gale purchased for resale for his personal profit ten shares of UDC stock from two of the plaintiffs. The several plaintiffs sold 122 shares of their stock in some thirty-two separate transactions. The trial court found that defendant Gale liable on the sale of all of the 122 shares.

As to individual purchases, the record shows that Gale bought five shares from the plaintiff, Glen V. Reed, on July 8, 1964, for \$350 per share. This purchase was made by Gale for Neal H. Phelps and Esther Phelps, or were resold to such persons who paid Gale \$530 per share for these shares. Defendant Gale did not advise plaintiff Reed of the resale.

Gale also purchased three shares of stock from the plaintiff, Letha H. Wopsock, some time after August 21,

1964, for \$350 per share for resale at a higher price which is not disclosed in the record. He also purchased another share from the same person in October 1964 for \$400 and an additional share in November 1964 for \$350. The disposition by Gale of these two shares is not indicated in the record.

The record does not show whether or not the defendant Gale participated for his personal profit or derived a personal profit from the purchase by other persons of shares of stock from the plaintiffs.

The participation by the defendant Gale in the sales by other plaintiffs to other persons as shown in the record need not be described in detail. In these transactions a typical participation by the defendant Gale was to act as a notary upon affidavits executed by the purchaser in connection with such a sale which have been hereinabove described, or to guarantee the seller's signature on a stock power which was the ultimate basis for the transfer of the shares of stock. As indicated above the trial court found the defendant Gale liable on each of these transactions. However, we hold this to be in error.

The "participation" by the defendant Gale in the execution of documents as shown by the record in connection with these sales cannot constitute a breach of duty on his part to any of the plaintiffs. In this connection he did no more than to perform ministerial functions required to carry out the transfer of the shares of stock. In this connection the defendant had no obligation to determine whether the recitations made in the affidavit were correct or not. Furthermore, even if he may have known that the recitations in this affidavit were not entirely correct, the plaintiff executing the particular affidavit was prepared and did assert that the facts were correct, and defendant Gale had no obligation to perform anything but the requested ministerial acts. (Petitioners' Appendix B, 114-116).

ARGUMENT

The claim of the petitioners against respondent Gale is based solely on an alleged violation of Regulation 10b-5 of the Securities and Exchange Commission, therefore, only one of the four arguments advanced in the petition for writ of certiorari applies to the respondent Gale. Argument number IV states that the basis on which the court of appeals rejected the duty of disclosure under rule 10b-5 threatens the federal scheme of protection of investors. In support of this position, the petitioners make the general statement that this is of great national importance because it circumscribes the rule of liability under rule 10b-5, yet, as the petition is analyzed, no conflict is presented between this decision and the decision of any other circuit court of appeals.

The court of appeals in this case ruled that the bank is not exempt from violation of rule 10b-5, in fact, the court ruled quite the contrary:

The record clearly shows that the defendant bank, the employer of the defendants Gale and Haslem, had knowledge that its employees were purchasing stock for their own account. Further, the record shows that in these transactions, the employees used the bank facilities, premises and personnel. Under these circumstances, these employees, as far as the plaintiffs were concerned, were apparently acting within their authority. Thus, the bank did become liable for any violation of the regulation 10b-5. (Petitioners' Appendix B, 117.)

Petitioners' second point does not apply to Gale because he was not included in the second count of petitioners' complaint wherein it is alleged that the bank had violated rule 10b-5 and also its so-called "fiduciary duties" to the petitioners.

The third and final point made in the petition for certiorari is that the court of appeals is in error because it imposes a requirement of "direct dealing or privity" under rule 10b-5. Careful analysis of this argument, however, reveals that petition-

ers urge that the requirement of reliance be eliminated as an element to be proved by the plaintiff in a rule 10b-5 case. This point is the thrust of the entire argument and logically so because petitioners failed to present any evidence at the trial court level showing that petitioners relied on the representations of Gale when they sold their stock.

The decision of the court of appeals was that reliance by the plaintiff upon representations of the defendant is a prerequisite to recovery and because there was no evidence in the record that petitioners relied upon the representations of Gale when they sold their stock, damages could not be recovered by petitioners. It should be noted that in all of the cases yet to come before the trial court (this was a bell-weather case) if the petitioners prove reliance, which was apparently overlooked in this case, petitioners will be entitled to recover damages from Gale for violation of rule 10b-5.

Petitioners are therefore appealing the decision of the court of appeals, not because it limits the scope of liability, but because they want to be allowed damages in the absence of reliance by the petitioners on the representations of Gale.

The decision of the court of appeals follows the well-established rule in civil cases under rule 10b-5 as pronounced in *List v. Fashion Park Inc.* 340 F. 2d 457 (2 Cir 1965):

Disagreement centers on the applicability and meaning of the requirement that reliance be placed upon the misrepresentation. Our examination of the authorities satisfies us that this requirement also carries over into civil suits under rule 10b-5, *Reed v. Riddle Airlines* 266 F. 2d 314, 319 (5 Cir 1959); *Kohler v. Kohler Co.*, 208 F. Supp. 808, 823 (E.D. Wis. 1962) *aff'd* 319 F. 2d 634 (7 Cir 1963); *Mills v. Sarjem Corp.* 133 F. Supp. 753, 767 (D.N.J. 1955); *Speed v. Transamerica Corp.*, 5 F. R.D. 56, 60 (D. Del. 1945); accord III loss, Securities Regulation 1765-66. The *dicta* in *Kardon v. National Gypsum Co.* 83 F. Supp. 613, 614 (E.D. Pa. 1947) are not necessarily to the contrary.

See also *Janigan v. Taylor* 344 F. 2d 781 (1st Cir 1965) Cert. denied 282 US 8799; 86 Supreme Ct. 53, 15 L Ed2d 120 (1965).

Judge Seth writing for the court applied these authorities to the facts of the instant case as follows:

In the case before us the facts of misrepresentation have been shown as to several of the transactions. The record, however, does not contain any evidence relating to reliance by the plaintiffs on the representations of the defendants Gale and Haslem. This is a necessary element of the cause alleged. *List v. Fashion Park Inc.* 340 F. 2d 457 (2d Cir.), considers, defines and requires both materiality of the representations and reliance. See also, 16 UCLA L. Rev. 404; 63 Nw. U.L. Rev. 434. The plaintiffs allege that certain acts and statements of the defendants were directed to them or were the proximate cause of their damages. Thus, the causal connection must be established — that in fact the loss resulted from defendants' acts — a simple and fundamental proposition in such actions for private damages. (Petitioners' Appendix B, 120).

CONCLUSION

It is the position of the respondent Gale that the decision of the Tenth Circuit Court of Appeals as regards to rule 10b-5 is not in conflict with any other court of appeals nor is there any issue raised by the case which merits review by this court. The unusual and unique facts of the instant case — the fact that the Secretary of the Interior outlined a detailed procedure under which the shares first had to be offered to members of the tribe before they could be sold to the general public — are such that this case will be of very little value as a guide to the future interpretation of rule 10b-5.

Respondent Gale requests that the petition for writ of certiorari be denied.

Respectfully submitted,

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CERTIFICATE OF MAILING

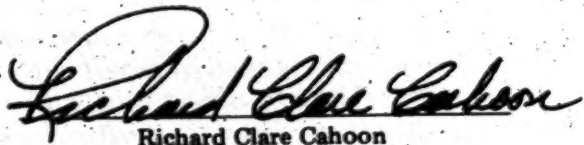
I, RICHARD CLARE CAHOON, hereby certify that I mailed a copy of the foregoing Brief of Respondent John B. Gale to the attorneys listed below at the addresses below on the 9 day of March, 1971;

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SUPREME COURT

NOV 23 1970

In the Supreme Court of the United States

OCTOBER TERM, 1970

70-78

APPEALERS: URB. CHIEFS OF THE STATE OF UTAH,
ET AL., PETITIONERS

UNITED STATES OF AMERICA

ANTHA REYON, ET AL., PETITIONERS

FIRST NATIONAL BANK OF UTAH, N.A.
UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF HABEAS CORPUS TO THE UNITED
STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

WRITING FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1331

**AFFILIATED UTE CITIZENS OF THE STATE OF UTAH,
ET AL., PETITIONERS**

v.

UNITED STATES OF AMERICA

ANITA REYOS, ET AL., PETITIONERS

v.

**FIRST SECURITY BANK OF UTAH, N.A.,
UNITED STATES OF AMERICA, ET AL.**

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE TENTH CIRCUIT**

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinions of the court of appeals in these consolidated cases are separately reported at 431 F. 2d 1337 and 1349 and are set forth at pages 99-121 and 122-125 of the Appendix to the petition.

JURISDICTION

The judgments of the court of appeals were entered on June 19, 1970. Timely motions for rehearing were denied on November 12, 1970. The petition for a writ of certiorari was filed on February 19, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether after termination of federal supervision over certain Indians and of restrictions on their property the United States has a continuing duty, for purposes of tort liability, to advise them with respect to sales of their stock in a corporation formed by them to manage tribal mineral rights.

2. Whether under 25 U.S.C. 345 the United States has consented to a suit to compel the conveyance to certain terminated Indians of an undivided 27 percent interest in the mineral estate of a reservation, which interest is presently distributed to individual Indians through shares of a corporation responsible for jointly managing the estate.

STATUTES INVOLVED

The relevant provisions of the Ute Termination Act, 25 U.S.C. 677-677aa, are set forth at pages 126 to 143 of the Appendix to the petition. Set forth in an Appendix to this brief, *infra*, p. 11, is 25 U.S.C. 345.

STATEMENT

The Act of August 27, 1954, 68 Stat. 868, 25 U.S.C. 677-677aa, provided for partition of the assets of the

Ute Indian Tribe between the mixed-blood¹ and full-blood members of the Tribe² and for termination of federal supervision over the trust and restricted property of the mixed-blood members (Sec. 677). The mixed-bloods were permitted to form an organization for the purposes of carrying out the provisions of the Termination Act. 25 U.S.C. 677e. Affiliated Ute Citizens of the State of Utah (hereinafter Affiliated Ute) was formed by them in 1956 for that purpose.

In 1958 the mixed-bloods formed the Ute Distribution Corporation (hereinafter the Corporation)³ in order to have distributed to them their share of tribal assets such as oil, gas, and mineral rights that were not easily divisible (Pet. App. 4-5).⁴ The Corporation issued 4900 shares of stock, 10 to each mixed-blood Ute (Pet. App. 5). On December 31, 1958, the Corporation and the First Security Bank of Utah entered into an agreement under which the Bank became the transfer agent for the stock and held physical possession of the stock certificates (Pet. App. 8-9).

In accordance with 25 U.S.C. 677n, the Corporation's articles of incorporation included a provision

¹ "Mixed-blood" means a member who possesses less than one-half Ute Indian blood, or a total of one-half or less of Indian blood. 25 U.S.C. 677a.

² The division was based upon a 27 percent share to the mixed-bloods.

³ On November 1, 1958, the Corporation's Articles of Incorporation were submitted to and approved by Affiliated Ute, Resolution No. 58-C-5.

⁴ The Corporation was to manage these interests jointly with the Tribal Business Committee of the full-blood Utes (Pet. App. 101).

that, prior to August 27, 1964, shares could not be sold unless first offered to members of the Tribe in a form approved by the Secretary (Pet. App. 105-106). If no member of the Tribe wished to buy, the shares could be sold to others, but only at a price not less than that stated in the offer to the Tribal members. The seller was required to furnish an affidavit to the Superintendent of the Reservation, stating the amount he received in the sale of his shares to a nonmember of the Tribe (Pet. App. 108). 25 C.F.R. 243.8 (1967 Rev.).

After removal of the restrictions on the property of each individual mixed-blood, the Secretary was required to publish a proclamation in the Federal Register that the federal trust relationship to that individual was terminated. "Thereafter, such individual shall not be entitled to any of the services performed for Indians because of his status as an Indian." 25 U.S.C. 677v. The proclamation was published on August 26, 1961 (26 Fed. Reg. 8042).

In the *Rejos* case, certain mixed-blood Indians sold 122 shares of their stock to various non-Indians (two of the non-Indians involved were employees of the defendant bank). The purchase prices, as reported in the affidavits submitted by the sellers, ranged from \$300 to \$600; the sellers' affidavits also stated that they had received this amount in cash. (Pet. App. 114-116.) These sales took place after termination and removal of restrictions on the mixed-bloods' property. The individual Indian sellers sued the United States under the Tort Claims Act on the ground that the government had violated a fiduciary

duty by permitting the sale of the stock at less than its fair market value.

In the *Affiliated Ute* case, suit was filed against the United States seeking distribution of 27 percent of the mineral estate underlying the reservation to the individual mixed-bloods and a determination that plaintiff Affiliated Utes is entitled to manage the property jointly with the Ute Tribal Business Committee. Jurisdiction was sought to be invoked under 25 U.S.C. 345 and 28 U.S.C. 1399 and 2409.

The district court in the *Affiliated Ute* case concluded that it had no jurisdiction because the suit was barred by sovereign immunity (Pet. App. 124). In the *Reynos* case, the district court found that the government, through its employees, had reasonable cause to know that the mixed-bloods were selling their stock to non-Indians for less than fair value under circumstances of a doubtful nature, that the government owed a duty to the sellers to prevent these sales, and that the government's failure to act was the proximate cause of the sales (Pet. App. 82-84, 106-107). The court concluded that the government had been negligent and awarded damages based on a fair value of \$1,500 per share (Pet. App. 97, 121).

The court of appeals affirmed in *Affiliated Ute Citizens* on the grounds that the suit was an unconscionable suit against the United States and that 25 U.S.C. 345 (waiver of consent with respect to allotment claims) and 28 U.S.C. 1399, 2409 (waiver of consent where the United States is a joint tenant or tenant in common) were inapplicable (Pet. App. 124-125).

The court of appeals reversed in *Reynos* on the basis of the Ute Termination Act, 25 U.S.C. 677 *et seq.*, holding (Pet. App. 109-110):

The statute expressly provides for termination of the Government's relationship with the individual mixed-bloods. The provisions are clear and the termination was accomplished and is final. It is clearly within the power of Congress and no one else to provide for such an end to the relationship between these individuals and the Government. *United States v. Waller*, 243 U.S. 452; *United States v. Nice*, 241 U.S. 591; *Tiger v. Western Investment Co.*, 221 U.S. 286. It is not for administrative officials or for the courts to modify this statutory termination by the creation of some status lying between wardship and complete termination.

* * * * *

The trial court was thus in error in concluding that "limited aspects of the federal trust relationship continued," or that any form of wardship continued, and thus that some duty on the part of the Government to the plaintiffs continued after termination in connection with their sales of UDC stock. There being no duty the trial court was in error in awarding damages against the United States under the Tort Claims Act.

The court's further holdings with regard to the claim that the defendant bank was liable for its agents' alleged violation of Rule 10b-5 of the Securities and Exchange Commission (17 C.F.R. 240.10b-5) are not relevant to the claims against the United States.

ARGUMENT

Both decisions are correct with respect to the claims against the United States, no conflict is presented, and neither decision presents an important question warranting review by this Court.

No one questions the rights of the Affiliated Ute Citizens to their 27 percent beneficial interest in the minerals of the reservation. Contrary to petitioners' assertion (Pet. 9-10), these rights are not rendered illusory by the court of appeals' conclusion that petitioners are not entitled to a separate conveyance (apart from the stock) of that interest (Pet. App. 125). Since petitioners are not seeking "possession" of any parcel of land to which they are entitled by an Act of Congress, they do not come within the consent to suit provided in 25 U.S.C. 345, and the court of appeals properly held that there was no jurisdiction (Pet. App. 125).⁵

Similarly, the court of appeals rightly concluded that the Termination Act, 25 U.S.C. 677 *et seq.*, terminated the prior relationship between the Indians and the United States before the stock transactions occurred and that the right of other members of the Tribe to first refusal for sales of this stock did not create any "restricted property," as that phrase is used with respect to Indian property, which might have extended the fiduciary relationship beyond the termination date. The court did not, as petitioners contend (Pet. 12-14), hold that the right of refusal

⁵ Petitioners have apparently abandoned the assertion of jurisdiction under 28 U.S.C. 1399 and 2409.

existed only in the Tribe. Rather, the court recognized that this right "was granted clearly to permit the members of the Tribe, the Tribe, or the full-blood members to have the first right to purchase property which was about to be sold to an outsider" (Pet. App. 108). This method of benefiting the full-blood members of the Tribe, who had not been terminated, created no duty on the part of the government with respect to the mixed-blood Utes, who had been terminated and who were attempting to sell their stock. The court of appeals was correct in so holding (Pet. App. 108-109), and its decision is not inconsistent with the quite different cases of *Menominee Tribe v. United States*, 391 U.S. 404; *Klamath and Modoc Tribes v. Maison*, 338 F.2d 620 (C.A. 9); and *Crain v. First National Bank of Oregon, Portland*, 324 F.2d 532 (C.A. 9).⁶

We note, in conclusion, that over the last decade the trend in Congress has been against following a policy of termination. The special situation here is thus unlikely to arise again in the foreseeable future.

⁶ *Menominee* and *Klamath* dealt solely with the effect of termination on treaty rights. In *Crain*, the Secretary of the Interior, pursuant to the applicable Termination Act, had established a trust over property of certain terminated Indians who were found to be in need of assistance with their affairs. The court held that this was not a violation of the Indians' Fifth Amendment rights because Congress had the power "to determine whether emancipation should be complete or only partial.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Attorney.

MARCH 1971.

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APPENDIX

25 U.S.C. 345 provides:

All persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment Act or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States; and said district courts are given jurisdiction to try and determine any action, suit, or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty (and in said suit the parties thereto shall be the claimant as plaintiff and the United States as party defendant); and the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him, but this provision shall not apply to any lands held August 15, 1894, by either of the Five Civilized Tribes, nor to any of the lands within the Quapaw Indian Agency: *Provided*, That the right of appeal shall be allowed to either party as in other cases.

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES
ROBERT SEEVER, CLERK

October Term, 1970

No. ~~1001~~

70-78

AFFILIATED UTE CITIZENS OF THE STATE OF UTAH,
an unincorporated association formed by and under the
supervision of the Secretary of the Department of the In-
terior pursuant to Public Law 83-671 (25 U.S.C. §§ 677-
677aa) composed of 490 so-called "mixed-blood" members
of the Ute Indian Tribe of the Uintah and Ouray Reserv-
ation, Utah, suing on its own behalf and as representative
for and on behalf of its 490 members and their heirs and
legal representatives as a class; and the 490 so-called
"mixed-blood" members of the Ute Indian Tribe of the
Uintah and Ouray Reservation, Utah, individually and as
an identifiable Indian group or band.

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondents.

ANITA REYOS, *et al.*,

Petitioners,

vs.

FIRST SECURITY BANK OF UTAH, N.A., UNITED STATES
OF AMERICA, JOHN B. GALE AND VERL HASLEM,

Respondents.

REPLY BRIEF FOR PETITIONERS

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. 1331

AFFILIATED UTE CITIZENS OF THE STATE OF UTAH,
an unincorporated association formed by and under the
supervision of the Secretary of the Department of the In-
terior pursuant to Public Law 83-671 (25 U.S.C. §§ 677-
677aa) composed of 490 so-called "mixed-blood" members
of the Ute Indian Tribe of the Uintah and Ouray Reserv-
ation, Utah, suing on its own behalf and as representative
for and on behalf of its 490 members and their heirs and
legal representatives as a class; and the 490 so-called
"mixed-blood" members of the Ute Indian Tribe of the
Uintah and Ouray Reservation, Utah, individually and as
an identifiable Indian group or band.

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondents.

ANITA REYOS, et al.,

Petitioners,

vs.

**FIRST SECURITY BANK OF UTAH, N.A., UNITED STATES
OF AMERICA, JOHN B. GALE AND VERL HASLEM,**

Respondents.

REPLY BRIEF FOR PETITIONERS

This Reply Brief is respectfully submitted for Petitioners in response to new points raised for the first time in the Brief for the United States in Opposition, pursuant to the provisions of Rule 24-4.

ARGUMENT

I

TERMINATION OF THE AFFILIATED UTES PROPERTY DID NOT OCCUR ON AUGUST 27, 1961

For the first time, the United States has asserted that termination of the *property* which was to be divided under the Act was on August 27, 1961. (Br. of U.S., p. 4) In the courts below, the United States consistently took the position that only termination of the *person* occurred on that date, and that supervision over the real property continued until August 27, 1964. The difference is important because it denies the "limited aspects of the federal trust relationship" which the trial judge found continued until the latter date and upon which he based liability. (App. 81, 91)

The position taken by the United States cannot be reconciled with the language of the Act. At page 20 of the Petition we discussed the language of 25 U.S.C. § 6770 which *excepts* real property from the removal of restrictions on August 27, 1961. There are, however, other provisions of the statute and regulations which negate the conclusions of the United States.

See, in particular, 25 C.F.R. 243.2(h) (App. 144):

"Termination of Federal supervision' means termination of Federal supervision over the particular real estate involved . . . and does not mean termination of the wardship relationship between the Indian and the United States on the occasion of the issuance of a so-called 'Termination Proclamation' (25 U.S.C. 677v)." (emphasis added).

In the trial court, the United States attempted to avoid the clear implications of the statutory language by urging that the Secretary, somehow, without statutory authority, converted the real property into personalty by delivering it to the corporation, UDC. The argument was obviously frivolous and was rejected by the trial judge.

The issue is of great importance to all Indians. Indeed, the Association on American Indian Affairs, Inc., the largest non-profit association representing American Indians, filed a brief *amicus curiae* in the trial court to urge the importance of the issue to the Indian community in general. Since substantially the same issue is now raised in a new form, we reproduce the brief filed by the Association on this important question for the convenience of the Court, as Appendix G. As the Association observed:

"This Court needs no citation for the principle that persons may be the beneficiaries of trust property without otherwise being subject to legal disability. . . . The law is equally clear that, if Congress so provides, as was done in this case, some aspects of the Federal trust relationship can survive a general termination statute . . ."
(App. G, iv)

II

JURISDICTION IS NOT CONTINGENT UPON A CLAIM OF "POSSESSION"

A second point raised in the Brief of the United States in Opposition which is entirely new, never having been asserted in the courts below, is that there is no jurisdiction under 25 U.S.C. § 345 to enforce the grants of interests in land, in the nature of minerals, assured under the Act because "petitioners are not seeking 'possession' of any parcel of land to which they are entitled." (Br. of U.S., p. 7).

The answer to this argument is contained in the language of the statute itself, pertinent provisions of which are quoted in the margin at page 9 of the Petition. The jurisdictional grant refers to several different interests in land, but significantly the term "possession," which the United States now suggests as an indispensable element, is not employed anywhere in the statute. Surely the real property owned by the Indians is a "parcel of land," and the terminated Utes clearly claim to be "lawfully entitled by virtue of any Act of Congress" — viz., the termination act. The AUC claim is, therefore, within the plain language of the jurisdictional grant.

Again, the issue is of profound importance to all American Indians. Surely Congress never intended to guarantee the terminated Utes important property rights and yet deny the federal courts power to enforce them. If the provisions of 25 U.S.C. § 345 relate only to conventional allotments, as the United States has suggested, the section has been effectively repealed, for the allotment system is no longer in effect.

The dimensions of the tragedy in the lives of the terminated Utes is measured by a comparison of the assertion that "[n]o one questions the rights of the Affiliated Ute Citizens to their 27 percent beneficial interest in the minerals of the reservation" (Br. of U.S., p. 7) with the recital of the formation of the Corporation. (Br. of U.S., p. 3) There is no statutory authority for the formation of the Corporation,* and the United

* 25 U.S.C. §6771 (3) (App. 136) permits the organization of corporation to handle grazing rights and water rights, but does not mention mineral rights. 25 U.S.C. §6771 (2) (App. 135) indicates that a corporation may not be formed to handle mineral rights. 25 U.S.C. §677e (App. 128) declares that the "authorized representative" which was to represent the terminated Utes in relation to the mineral rights was to be formed pursuant to a "constitutional and bylaws," rather than a corporate charter. It seems rather clear, therefore, that the Act did not contemplate handling of the mineral rights by a corporation.

States refers to none. Yet, because the stock of the majority of terminated Utes was acquired by fraud, and the United States refused to prevent the fraud by requiring compliance with the Act, the corporation is now owned by non-Indians. Thus, the United States may not question the beneficial rights of the terminated Utes, but just as surely it is delivering those rights to persons it acknowledges to be without any proper claim, and defiantly denies that it should be required to account for its conduct. If such conduct is condoned, the plight of the terminated Utes is most surely the plight of the entire Indian community in microcosm.

This attitude of the United States is perplexing, for considering the disclaimer of any interest in the 27 percent of the minerals, the delivery of them to the terminated Utes which is sought by AUC would not result in any loss to the United States of any sort.

Finally, the conclusory note of the United States that the special problems of this case will not arise again is speculation at best, and demonstrably false. The present Congress and Administration have, to be sure, recognized the tragedy of termination and issued statements renouncing the policy. It must be considered, however, that termination is but a revival of the earlier allotment policy which has been with us in many different forms for over a hundred years. Thus, the prospect is that the policy will yet crop up again, though perhaps as another variation of what is a worn and discarded idea. Even if it does not, however, the devastating effects of the policy are very real in the lives of many thousands of Indians. That fact alone is sufficiently important to justify the guidance of this Court in construing these laws.

CONCLUSION

Because of the importance of the questions presented to all American Indians, both terminated and non-terminated alike, certiorari should be granted. The views of important Indian representatives, such as the Association on American Indian Affairs, Inc., should also be considered.

Although this brief does not reply to the arguments of the bank and the other defendants, who the trial judge concluded were guilty of fraud, we do not ignore the fact that it is their conduct which is the principal cause of the injury to the terminated Utes. The United States was merely negligent in failing to prevent the fraud of others. The arguments of the other parties are arguments of law to which no reply is appropriate at this time.

It is worthy of note, however, that the defendant's position that a formalistic restriction of the protections of the securities laws is not a matter of sufficient importance to merit the attention of this Court does not represent the view of the Securities and Exchange Commission in briefs recently filed with this Court* in a case involving the takeover of an insurance com-

* See *Manhattan Casualty Company v. Bankers Life and Casualty Co.*, docket no. 1159 (Supreme Court of the United States, October Term, 1970). In its brief in support of the petition in the *Bankers Life* case, SEC said:

"by the enactment of Section 10(b) Congress intended to prevent inequitable and unfair practices and to ensure fairness in securities transactions generally, whether conducted in the organized securities markets or face-to-face.

"... As the Senate Committee stated, 'Motive furnishes no justification for the employment of manipulative or deceptive devices.'" (citations omitted)

SEC explained that section 10(b) of the Securities Exchange Act "was intended to be as broad as the Act itself, serving to fill any gaps left by more specific provisions in preventing 'cunning devices,'" and that this Court should consider such a question because:

pany. Banking and insurance represent the two major areas of claimed exemption from securities laws, which have been the subject of constant litigation. For that reason, we urge that the views of SEC also be solicited on the important issues presented by this case.

Respectfully submitted,

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"The rule of law established by the court below poses a serious threat to these antifraud provisions by formalistically and narrowly defining and severely circumscribing the scope of the securities transactions to which they apply."

In the *Bankers Life* case the "formalistic" and narrow construction was one which denied application of the Rule to fraud associated with acquisition of an insurance company. In AUC, the formalistic construction eliminates banking transactions from the purview of the rule.

APPENDIX G

AMICUS CURIAE BRIEF OF THE ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

REYOS, et al.,

Plaintiffs,

v.

FIRST SECURITY BANK OF UTAH,
et al.,

Defendants.

Civil No. C-39-65

BRIEF OF ASSOCIATION ON AMERICAN INDIAN
AFFAIRS, INC., AS AMICUS CURIAE

STATEMENT

Under the Act of August 27, 1954, 68 Stat. 868, 25 U.S.C. 677 *et seq.* (also known as Public Law 671), Congress authorized, *inter alia*, the partition and distribution of the assets of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah, and further provided for the termination of Federal supervision over the trust and restricted property of the so-called "mixed-blood members" of the Tribe. Congress recog-

nized, of course, that certain assets of the Ute Indian Tribe could not physically be divided or even accurately be identified. According, Section 10 of the 1954 Act, 25 U.S.C. 677i, directed in part:

"All unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall be managed jointly by the Tribal Business Committee [full-bloods] and the authorized representatives of the mixed-blood group, subject to such supervision by the Secretary as is otherwise required by law. . . ."

Pursuant to Section 23 of Public Law 671, 25 U.S.C. 677v, the Secretary of the Interior eventually published in the *Federal Register* a proclamation declaring that the Federal trust relationship to each mixed-blood Ute was terminated as of August 27, 1961. Prior to the effective date of this proclamation, however, the mixed-blood group had designated as its authorized representative under Section 10 for managing unliquidated, undivided and undistributed tribal assets the Ute Distribution Corporation, a corporation duly organized under the laws of the State of Utah, and had assigned such assets to the corporation in exchange for ten (10) shares of stock therein per member. Plaintiffs in this case are mixed-blood Utes who transferred their stock in the corporation to non-Utes after August 27, 1961, and prior to August 27, 1964, the first date when interests in tribal assets no longer had to be offered to other members of the tribe before sale to non-members. See Section 15 of the 1954 Act, 25 U.S.C. 677n.

One of the questions facing this Court is whether stock of the Ute Distribution Corporation was trust or restricted property subject to the supervision of the Secretary of the Interior during the period August 27, 1961 to August 27, 1964, and it is to that single issue of Indian law that this brief is addressed.

ARGUMENT

Stock of the Ute Distribution Corporation Is Trust or Restricted Property Subject to the Supervision of the Secretary of the Interior

Defendants in this case apparently are contending that the stock of the Ute Distribution Corporation lost its character as trust or restricted property on August 27, 1961 — the effective date of the Secretary's proclamation pursuant to Section 23 of the 1954 Act, 25 U.S.C. 677v, declaring that the Federal trust relationship to the mixed-blood Utes had been terminated, that such individuals no longer would be entitled to any special services for Indians and that the statutes of the United States which affect persons because of their status as Indians no longer would be applicable to them. This thesis is inconsistent with the very terms of the 1954 Act. Specifically, Section 16 of Public Law 671, 25 U.S.C. 677o, expressly provides that, upon the happening of certain events:

"... the Secretary is authorized and directed to immediately transfer to him unrestricted control of all other property held in trust for such mixed-blood member by the United States, and shall further remove all restrictions on the sale or encumbrance of trust or restricted property owned by such member of the tribe, and Federal supervision of such member and his property shall thereby be terminated, except as to his remaining interest in tribal property in the form of any unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other tribal assets not susceptible to equitable and practicable distribution, all of which shall remain subject to the terms of this Act, notwithstanding anything herein contained to the contrary." (Emphasis supplied.)

In short, Congress excepted certain unliquidated, undivided and undistributed tribal assets from the scope of the termination proclamation, and the interest of each mixed-blood Ute in such assets was (and is) represented by his stock in the Ute Distribution Corporation.

The conclusion that Ute Distribution Corporation stock remains trust or restricted property subject to the supervision of the Secretary of the Interior even after the special Federal relationship to its owner is terminated finds support in other provisions of Public Law 671. As previously noted, Section 10 of the 1954 Act, 25 U.S.C. 677i, directs that the management of unliquidated, undivided and undistributed tribal assets shall be "subject to such supervision by the Secretary as is otherwise required by law," which, in the case of oil, gas and other minerals, for example, would mean Secretarial approval of any leases pursuant to 25 U.S.C. 396a *et seq.* Section 15 of the 1954 Act, 25 U.S.C. 677n, requires any mixed-blood Ute who desires to dispose of his interest in tribal assets before August 27, 1964, first to offer that interest for sale to other members of the tribe.¹ Most important, by the Act of September 25, 1962, 76 Stat. 597, approved over a year after the date of termination for the mixed-blood Utes, Congress amended Section 10 of Public Law 671, 25 U.S.C. 677i, to provide that the stock of Ute Distribution Corporation "shall not be subject to mortgage, pledge, hypothecation, levy, execution, attachment or other similar process, while such stock remains in the own-

¹ Although the statute here speaks of "real property" and "a covenant to run with the land" (25 U.S.C. 677n, Article VIII of the Ute Distribution Corporation Articles of Incorporation similarly provides that "If any stockholder who is a member of the mixed-blood group of said Ute Indian Tribe determines to sell or dispose of his stock in this corporation at any time prior to August 27, 1964, he shall first offer it to the members of the tribe. . . ." This stipulation, moreover, is embodied in the Secretary's regulations relating to the sale of Ute Distribution Corporation stock. 25 CFR 243.12.

ership of the original stockholder or his heirs or legatees. . . . In the light of these statutory conditions, stock of the Ute Distribution Corporation owned by mixed-blood Utes hardly can be characterized as unrestricted or otherwise free from Federal supervision.²

This Court needs no citation for the principle that persons may be the beneficiaries of trust property without otherwise being subject to legal disability. The sole question that remains, therefore, is whether the broad language of Section 23, 25 U.S.C. 677v, declaring that the "Federal trust relationship to such individual is terminated" as a matter of law served to end that relationship not only with respect to the person of each mixed-blood Ute, but also with respect to property (stock) which otherwise would have remained subject to a trust under other provisions of the 1954 Act. The law is clear that Congress has the exclusive power to determine when, how and by what steps special Federal responsibilities towards Indians are to be ended, and whether such emancipation shall be complete or only partial. *Creek County v. Seber*, 318 U.S. 705, 718 (1943); *United States v. McGowan*, 302 U.S. 535, 538 (1938); *United States v. Nice*, 241 U.S. 591, 698 (1916). The law is equally clear that, if Congress so provides, as was done in this case, some aspects of the Federal trust relationship can survive a general termination statute such as Public Law 671 and like

² Indeed, each certificate of Ute Distribution Corporation stock carries the following Notice of Restriction on Transfer:

"Transfer of this certificate at any time prior to August 27, 1964, to a person not a member of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, as defined in Public Law 671-83rd Congress, approved August 27, 1954, 68 Stat. 868, shall be invalid unless the certificate of the Superintendent of the Uintah and Ouray Reservation is endorsed thereon showing that a prior and proper offer has been made to members of said tribe in accordance with law and the regulations of the Secretary of the Interior."

legislation passed in 1954. *Cain v. First National Bank*, 324 F. 2d 632 (9th Cir. 1963) and cases cited therein at page 536 (Klamath Tribe); *Menominee Tribe of Indians v. United States*, F. 2d (C. Cls. 1967). cert. granted U.S. (October 9, 1967).

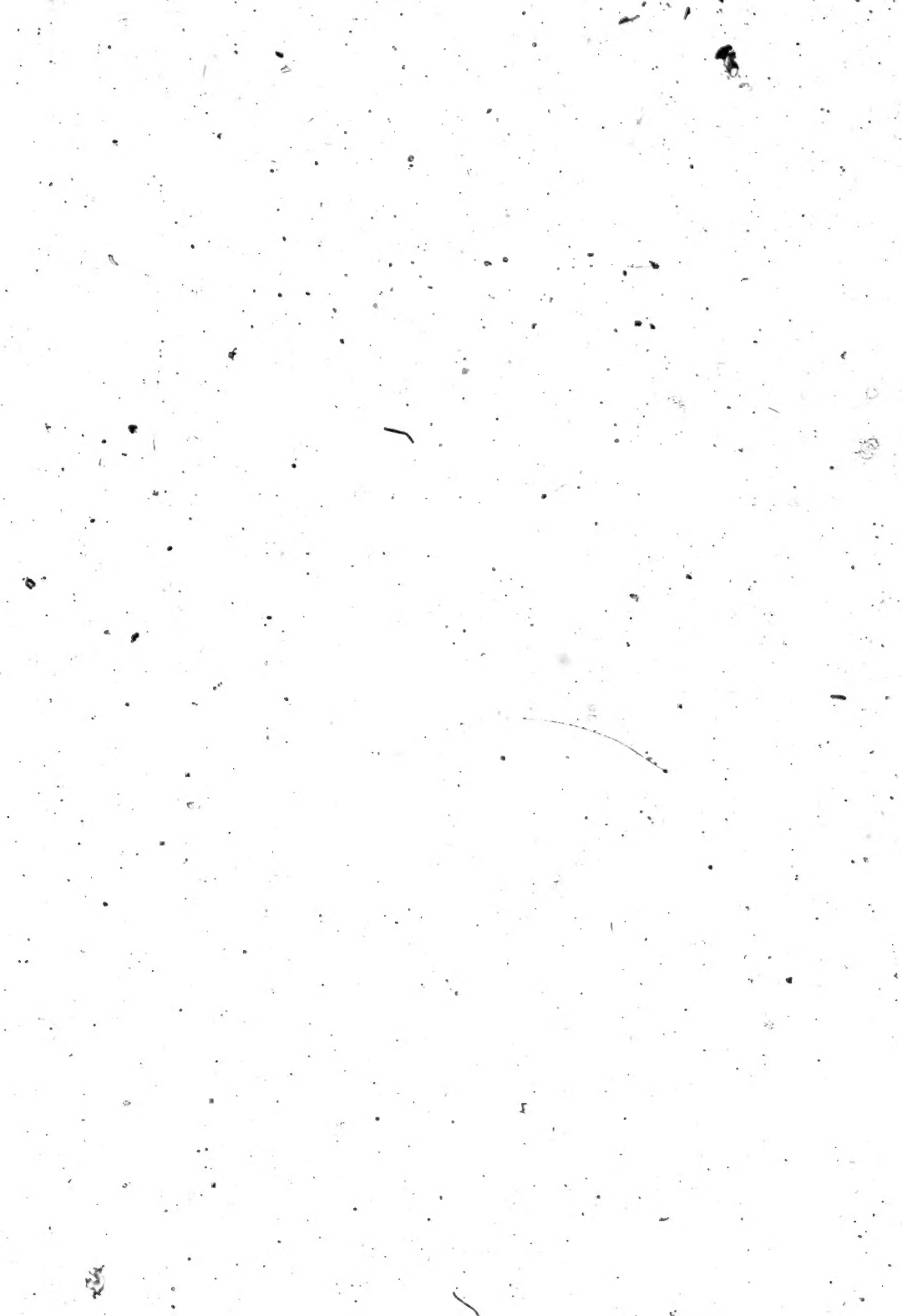
CONCLUSION

In view of the foregoing facts and principles, the conclusion follows that stock of the Ute Distribution Corporation remained trust or restricted property subject to the supervision of the Secretary of the Interior even after August 27, 1961. The Association expresses no opinion at this time as to whether the Secretary's failure to protect mixed-blood Utes from improvident disposition of such stock constituted a violation of the Federal Tort Claims Act (*cf. Hatachley v. United States*, 351 U.S. 173 (1956)), or otherwise gave rise to a valid cause of action.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-78

**AFFILIATED UTE CITIZENS OF THE STATE
OF UTAH, ET AL.,**

Petitioners,

—v.—

UNITED STATES, ET AL.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT**

PETITION FOR REHEARING

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT

PETITION FOR REHEARING

Petitioners AUC and Reyos jointly petition for rehearing on the decision on the merits dated April 24, 1972, as to questions left open by the opinion and which the Court should either resolve or permit the District Court to examine on remand, and as to apparent inconsistencies in the AUC portion of the case.

THE IMPACT OF THE DECISION ON THIS NATION'S
OBLIGATIONS TO INDIANS AND THEIR LANDS
SHOULD BE RECONSIDERED

Petitioners respectfully request rehearing on those aspects of the case dealing with the identity of the "authorized representative." These portions of the opinion reflect fundamental mistakes of law and fact which, if not corrected, may impair the rights of all Native Americans in matters extending far beyond the issues of this case. This Court, as so often in the past, represents the last hope that these first Americans have to require that this country's commitments to them be honored. Surely such a matter is of sufficient importance to justify rehearing.

We must seek to demonstrate to them that society is responsive to their patient pleas and help them to live among us in prosperity, dignity and honor.

—PRESIDENT RICHARD M. NIXON*

In response to the dilemma posed by the Petition of whether BIA can alter the termination procedures prescribed in acts of Congress, the opinion replies that because "section 6 of the Act, 25 U.S.C. §677e, authorized the mixed-bloods to organize, to adopt a constitution and by laws, and to provide, by that constitution, for the selection of authorized representatives," and because the Constitution thus adopted

*From an address to the National Congress of American Indians, Omaha, Nebraska, 1968, quoted at COMMONWEAL, 4 Sept., 1970, at 432.

provided that a "quorum" shall consist of twenty-five voters (E. 161), the requirements of Section 6, 25 U.S.C. §677e, of "a majority vote of the adult mixed-blood members at a special election authorized and called by the Secretary" for the valid formation of a common organization were superseded. The opinion thus answers Petitioners' protest against high handed bureaucratic action (See Reply Brief for Petitioners, pages 8-11) with the suggestion that if *some* of the Indians (who the Act contemplated were of limited ability at best) concurred, a disregard of the Act's requirements may be sanctioned. If Congress' specification of a "majority" of the 490 persons who were adults may be thus changed to 25, what limits to such arbitrary rewriting of Congressional mandates are then permissible? May BIA, or an officious Indian leader (or in this case, the tribal attorney), substitute the judgment of a single person, or perhaps eliminate any referendum at all?

It is unthinkable — literally — that these unlettered terminated Utes could conceptualize the fine spun reasoning which the opinion has advanced to justify substitution of the clear mandate of the Act. The opinion effectively means that persons who are legally wards of the state may be *estopped* to assert their rights under an act of Congress, which surely introduces a new and dangerous rubric into the law.

I am an Indian and am looked on by the whites as a foolish man; but it must be because I follow the advice of the white man.

—SHUNKA WITKO (FOOL DOG)*

Alternatively, the opinion proposes that because the AUC Constitution in Article V, §1(b) empowered the board of

*Quoted at BROWN, BURY MY HEART AT WOUNDED KNEE 274 (1970).

directors to delegate "to corporations organized in accordance with the Act" powers necessary to accomplish their purposes, and because AUC adopted Resolution 59-8 purporting to delegate the powers of Article V, §1, paragraph (b), UDC is therefore the "authorized representative" (Op. 4). This analysis ignores that (1) UDC was not "organized in accordance with the Act" as the opinion assumes. The only corporations authorized by the Act were those "for the grazing of livestock, [and] handling of water and water rights." (See 25 U.S.C. § 6771 (3) and Reply Brief for Petitioners 23-24). The analysis also ignores that (2) the authorized representative power was contained in paragraph (a) of the section rather than paragraph (b) (See Reply Brief for Petitioners 29-30), and was therefore not delegated.

What the opinion does not dispose of, which is relevant to the Court's conclusion, is whether it is fair or reasonable for the terminated Utes to be thus charged with the loss of their heritage. They did not author the disputed resolution or conceptualize the effect this Court has now attached to it. They merely executed documents presented to them by the tribal attorney, who was also installed as their attorney by BIA. The appearance of that same attorney herein, in opposition to the vital interests of his former clients and in disregard of his solemn covenant with them that he would not do so (See Reply Brief for Petitioners, 14 at note 14), is a circumstance which should bear heavily on whether the terminated Utes may be charged by his acts with the presumption that they intended to abandon Congress' safeguards.

In this connection, Petitioners point in requesting that they be referred to as "terminated Utes" was evidently not well communicated (see Op. 2, at footnote 3). To put the matter more bluntly, the use of such a term by the draftsman of the Act, with its obvious racial overtones, is but symptomatic of the calculated disregard of the terminated Ute's

rights in every step of the termination program, including the formation of UDC. The author of that slur was the tribal attorney. Though the Act was adopted by Congress, whose intent must control its doubtful provisions, it was the tribal attorney who was its author. He — not BIA — authored the deviation from the plan Congress sanctioned, when he formed UDC. It was he who purported to serve as legal counsel to *both* sides in the partition of a veritable fortune. Cf. Luke 16:13. May such important rights, perhaps, with the entire course of Indian history hanging in the balance, be treated so casually? Should the questionable practices of one mere man not only be given the force of positive law, but be construed in the manner most prejudicial to the interest of the clients he supposedly served? General moral concepts — as well as the ABA Code of Professional Conduct — should preclude such a result.

In holding the terminated Utes strictly accountable for (1) this "resolution adopted with a 42-5 vote," or (2) the adoption of Resolution 59-8 by the vote of 5 Indians, notwithstanding the Act's requirements of a majority vote of adults, the Court has failed to recognize the implication of the Acts promise that the Secretary would approve their "choice of counsel and fixing of fees," 25 U.S.C. §677f. That promise undoubtedly engendered confidence in the terminated Utes that the attorney thus selected for them would *faithfully* apply the safeguards written into the Act.

These matters were given too little attention in the opinion. Particularly in conjunction with the persons of limited abilities being forced to rely on counsel having such a conflict, they present matters warranting inquiry on rehearing.

They made us many promises, more than I can remember, but they never kept but one; they promised to take our land, and they took it.

—MAPHUA LUTA (RED CLOUD)*

*Quoted at BROWN, BURY MY HEART AT WOUNDED KNEE 448 (1970).

What the terminated Utes *could* understand was the constantly repeated promise of the Act that the Secretary would see that everything was done properly; by protecting the rights of members "in need of assistance," 25 U.S.C. §677u; by assisting them "in preparing for termination," 25 U.S.C. §677; by proceeding in the manner he deemed in their best interest, 25 U.S.C. §677aa; by providing them with assistance on request and approving their plan for distribution of assets, 25 U.S.C. §677i; by approving trustees and the terms and conditions of trust, 25 U.S.C. §677l(4); and certifying that changes in their status were not detrimental, 25 U.S.C. §677c. These Indians had been nurtured on a system in which the Government supervised their every deed, and such promises led them to believe that it would continue to do so in at least these particulars. The failure of the opinion to recognize and implement these promises, and others which appear in the legislative history, should be reconsidered. If they are not, the entire Indian community may have its confidence shattered. Once more, Indian rights will be unsettled. Once more, serious questions will be raised about whether the Government may be trusted where Indian rights are concerned.

Sapaniese Cuch stated . . . that land was eternal and belonged to a person even though dead, that it was part of their birthright, the same as they passed on their own blood to their children; that the land was theirs, and that . . . they should not be disturbed in what little they had left.

—MINUTES OF A MEETING OF THE WHITE ROCKS
COMMUNITY OF UTE INDIANS, March 14, 1945

The Indian's land base is of importance to him far beyond its mere economic value. To the Indian, land is a way of life,

his religion, the stuff of which Indian culture is made. Congress, and President Nixon, have recognized these facts, and made them a part of our national policy, such as in the return of 48,000 acres of valuable forest lands and the sacred Blue Lakes to the Taos Pueblo's in December 1970 with the declaration that "this will mark one of those periods . . . that we started on a new road which led us to justice in the treatment of those who were the first Americans . . ." Washington Post, Dec. 16, 1970 at 27, col. 1.

The implicit assumption of the opinion that these Indians, or any Indians, knowingly and intentionally surrendered control of their lands to a corporation now owned by non-Indians, or that they understood that their stock sales would have that effect, is a conclusion at odds with the President's "new road" policy and one which should be re-examined.

The implications are devastating. The terminated Utes have litigation pending in the Court of Claims seeking compensation for their lost hunting and fishing, timber and water rights. See *Affiliated Ute Citizens v. United States*, No. 156-69 (United States Court of Claims). The Menominee, and perhaps other Indian groups, have similar claims pending. Shall it be *assumed* that they voluntarily surrendered their rights, with no hearing on the merits at all? That could well be the effect of the opinion, and the end of the President's new road of justice.

There may be a temptation for those of us who are the product of a culture which emphasizes personal property values to view the spectre of chaos in Reservation oil and gas leasing suggested by the tribal attorney (Defendent Intervenor Br. 3) as an impediment to recognition of the aspirations of the terminated Utes which spring from their own culture. Undesirable consequences for the Reservation land policies if AUC's rights as authorized representative are

recognized could occur *only* if one assumes bad faith on the part of AUC. There is no foundation for such an assumption. But what of the consequences for the remainder of this nation's Indian citizens if we do not hazard that risk? Is this nation not big enough to recognize these rights? Shall the cultural values of this small group be sacrificed to massive oil interests?

Even if there could be some basis in the Record for assuming bad faith on the part of the terminated Utes, this Court is not powerless to devise appropriate relief. A *prospective* recognition of AUC's rights, limited as to its retroactive effect, would avoid the fears contrived in the tribal attorney's brief, yet do substantial justice to the Indian petitioners.

—an interest in people, rather than things; a strong sense of community; a need to share our lives with others; a dignity in harsh surroundings; a sympathetic, non-exploitive love for nature; and taking the measure of a man not by what he has, or looks like, or says, but by what he is.

You and I know these things. But too many other Americans do not.

—SENATOR EDWARD M. KENNEDY*

AUC does not propose a mere reargument of that which has now been rejected. What is requested is an inquiry into the unique nature of the Indian personality as it bears upon the issues of this case. Such an inquiry, which was impossible within the scope of legal briefs on the merits, will demonstrate that even if the purport of the disputed resolutions was as the

*From an address to the National Congress of American Indians, Albuquerque, New Mexico, October 7, 1969.

Court has concluded, they should nevertheless not be read quite so literally. That is so because Indian customs do not admit of such a rigid reading, in which importance is attached to particular words such as the opinion attaches to the term "powers . . . necessary or desirable in the accomplishment of the objects and purposes for which said corporations may be organized" (Op. 4). Surely the meaning of these acts in the eyes of the Indian is a fundamentally important inquiry. Such inquiry is possible now that the scope of the issues has been reduced.

The query of Mr. Justice Marshall at oral arguments as to just how long we must continue to protect our Indian brothers was most appropriate. Time was not available to respond adequately. The answer, which we propose to supply on rehearing, lies in the distinct culture of the Indian, with its emphasis on non-exploitive sharing of lives and things.

If a compulsory cultural change is the answer, which is simultaneously the basic assumption and fundamental weakness of termination, such change cannot be wrought in this generation. This generation of Native Americans was nurtured on bureaucratic paternalism. Such persons should not be presumed to have intended more than Congress prescribed. The inquiry which AUC proposes will reveal that they relied, as they had a right to do, on their belief that Congress' devices for their protection would be respected. This Court should require that their natural expectations be honored.

II

FICTITIOUS AFFIDAVITS SHOULD NOT BE USED AS A BASIS FOR OFFSETS

This Court has failed to comment upon the inconsistency of declaring the "affidavits" which the terminated Utes were

required to sign as sham, yet charging the Indian with the recitations of these same affidavits for the purpose of computing damages. This Court has now held that "adequately supported by the record," was the fact that:

Some of the affidavits do not accurately describe the sales to which they relate. Although they recite that the sales were for cash, some sellers actually received second hand automobiles or other tangible property. (Op. 15).

The opinion is silent, however, concerning the practice of the trial court in accepting these "affidavits" as an offset against the \$1500 per share damages awarded. Thus Leonard Richard Burson was awarded \$9,969.07 for his lost heritage (A. 575), representing \$15,000.00 for ten UDC shares less \$30.93 previously recovered (A. 531) and \$5,000.00 recited in his "affidavit" (A. 491). In fact, he only got \$3,200 and a used car.

Two injustices are evident in that practice.

First, in a case in which the avowed purpose is to settle rights of terminated Indians, the traditional burden of proof has been reversed to the extent that it is *presumed* that the used car was of the value recited in the affidavit. The usual rule is "that if the fact is one that is required to be 'affirmatively' pleaded by the defendant he will ordinarily have the burden of persuasion . . ." See MCCORMICK ON EVIDENCE 673-74 (1954). Therefore, if the used car was of equal value to the stipulated cash, and if it can be considered a substitute for the cash which the offer required, the *defendant* must prove that fact. Cf. *Cumberland Glass Manufacturing Co. v. DeWitt Co.*, 237 U.S. 447, 455-56 (1914).

Second, as was indicated at page 38 of the Brief for Petitioners, the used cars should not be allowed as offsets in any event because this Court has consistently said that if a purchase

of restricted property (this Court acknowledges that the underlying assets are restricted at Op. 4) is made in violation of prescribed procedures the sale may be set aside and the Indian need not make restitution. See *Heckman v. United States*, 224 U.S. 413, 446-447 (1912).

The effectiveness of the acts of Congress concerning the Indian's thriftlessness is not thus to be destroyed. The restrictions were set forth in public laws, and were matters of general knowledge. Those who dealt with the Indians contrary to these provisions are not entitled to insist that . . . the purchase price [be] repaid, and thus frustrate the policy of the statute.

See also *United States v. Trinidad Coal and Coking Co.*, 137 U.S. 160 (1890). In *Bacher v. Patencio*, 232 F. Supp. 939, 941 (S.D. Cal. 1964) *aff'd per curiam* 368 F. 2d 1010 (9th Cir. 1966) the matter was put in a perspective appropos this case when it was observed that:

[T]his result may be harsh to the [defendants] but as Justice Holmes once said, people must turn square corners when they deal with their government. They must do the same when dealing with their government's wards.

This case is not in form one for restitution, but the damages awarded are calculated to be in lieu of restitution. The same rules should, therefore, apply.

From a purely practical standpoint, the trouble with this holding is that even though this Court has condemned these "affidavits," it has given them effect by recognizing them as an offset. This Court should reconsider this aspect of its opinion because, in a decision avowedly to resolve important issues "for Indians whose federal supervision is in the course of termination" (Op. 9), failure to strike these offsets based

upon violations of the offering procedure, or at a bare minimum require the *defendants* to prove the reasonableness of the consideration they recite, amounts to an abrupt change in Indian policy. The Indian will have no assurance of fair dealing if this Court permits such practices to stand.

III

DAMAGES SHOULD INCLUDE INTEREST

The opinion leaves open the question of whether damages should include pre-judgment interest. It is probable that such an award is within the scope of the remand for further proceedings which has been ordered, but the manner in which the opinion leaves the question unsettled is undesirable.

The law in the Court of Appeals for the Tenth Circuit, as it has developed subsequent to the date when the terminated Utes' cases were tried, includes the award of pre-judgment interest as an element of the "fair value of what [the plaintiff] would have received had there been no fraudulent conduct" which this Court has announced as the measure of damages. *Esplin v. Hirschi*, 402 F. 2d 94 (10th Cir. 1968) *cert. denied* 394 U.S. 928 (1969); *Mitchell v. Texas Gulf Sulphur Co.*, 446 F. 2d 90 (10th Cir. 1971) *cert. denied* 40 U.S. Law Week 3288 (U.S., Dec. 20, 1971) *rehearing on petition denied*, 40 U.S. Law Week 3352 (U.S., Jan. 24, 1972), *cert. denied* 40 U.S. Law Week 3399 (U.S., Feb. 22, 1972); *Financial Industrial Fund, Inc. v. McDonnell Douglas Corp.*, CCH FED. SEC. L. REP. ¶92,811 (D. Colo. 1970). Fairness to these Indian plaintiffs dictates that they at least be awarded a damage measure equal to that of the sophisticated non-Indian investors who were the plaintiffs in *Mitchell*.

The importance of recognizing pre-judgment interest as an element of damage is dramatically apparent in light of the "bellwether" procedures which have been employed. Of the

85 plaintiffs, only 12 have their claims reduced to judgment. These 12 have been accruing interest on their judgment while the remaining 73 who, because of the "luck of the draw," have not had judgment entered in their behalf face the threat of losing the award of any interest, not because they were less diligent than their brothers, but because the defendants First Security Bank and its officers have pursued their appeal. That, perforce, is the basis for the award of pre-judgment interest. The innovative "bellwether" procedures invoked by the trial judge were intended to streamline procedure, not to supply an avenue for the bank and its officers to further victimize the terminated Utes with years of appellate delay. It goes without saying that a broker of credit such as the bank has generated interest with Petitioners' money while this case has been in progress, and therefore would not be disadvantaged if it were required to now respond with interest.

The propriety of such an award is further evident if it is considered that such damages would be available under the applicable state law. Utah Code Annotated §61-1-22 (1953) provides that a plaintiff may recover "interest at 6% per year from the date of payment, costs and reasonable attorneys fees." Damages in Federal Court should at least comprehend damages available under comparable provisions of state law. Significantly, the Utah statute also mentions attorneys fees, which we have previously urged be awarded. See Brief of Petitioner, page 55. The Court's opinion is also silent on that point.

The opinion should be amended to award these additional items of damages, or at least leave the question open for the trial court.

CONCLUSION

Petitioners do not seek rehearing on all aspects of the opinion. The findings that the government is not liable, and

that the terminated Utes are not entitled to a pro-rata distribution of the minerals, are findings with which AUC disagrees, but does not challenge.

Damages, and the "authorized representative" question, are those with which rehearing is requested. The former should be corrected without formal argument, for they represent simple oversights. The latter should be scheduled for briefing and argument concerning the social implications of the opinion — questions which have not been disposed of or briefed in depth to date.

The seating of two new justices, plus the absence of the Chief Justice during oral arguments and the dissent of Mr. Justice Douglas on the authorized representative question, are circumstances suggesting the propriety of rehearing. The query of Mr. Justice Marshall during oral argument concerning these very matters suggests that the issue is an important one of concern to the members of the Court. The care which is already evident in six months of efforts in resolving the inherently complex issues presented further suggest that rehearing on these limited aspects of the case would be appropriate.

Respectfully submitted,

/s/ Parker M. Nielson

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CERTIFICATE OF COUNSEL

As counsel for the Petitioners, I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not to delay, and is filed in accordance with the provisions of Rule 58(1).

/s/ Parker M. Nielson

Parker M. Nielson

Attorney for Petitioners

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~1334~~

70-78

AFFILIATED UTE CITIZENS OF THE STATE OF UTAH, ET AL.,

Petitioners,

v.

UNITED STATES OF AMERICA

ANITA REYOS, ET AL.,

Petitioners,

v.

FIRST SECURITY BANK OF UTAH, N.A.,
UNITED STATES OF AMERICA, ET AL.,

Respondents.

**MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE
AND BRIEF OF ASSOCIATION ON AMERICAN INDIAN
AFFAIRS, INC., AS AMICUS CURIAE**

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1970

No. 1331

AFFILIATED UTE CITIZENS OF THE STATE OF UTAH, ET AL.,
Petitioners,

v.

UNITED STATES OF AMERICA

ANITA REYOS, ET AL.,

Petitioners,

v.

**FIRST SECURITY BANK OF UTAH, N.A.,
UNITED STATES OF AMERICA, ET AL.,**

Respondents.

**MOTION FOR
LEAVE TO FILE BRIEF AMICUS CURIAE**

The Association on American Indian Affairs, Inc., respectfully moves the Court pursuant to Rule 42(3) for leave to file the attached brief *amicus curiae* in the above-captioned cases. The petitioners and respondent United States have consented in writing to the filing of this brief. Respondent First Security Bank of Utah, N.A., has refused to consent to the filing of the brief, and the individual respondents have not answered the letters of counsel for the Association seeking their consent.

The Association on American Indian Affairs is a non-profit membership corporation, organized under the laws of the State of New York for the purpose of protecting the

rights and improving the welfare of American Indians. The largest Indian-interest organization in the country, the Association's membership of 50,000 is made up of both Indians and non-Indians, and is nationwide in scope. Over the years, the Association frequently has participated in leading cases involving issues of Indian law before the Federal and State courts, including the filing of *amicus curiae* briefs with this Court in *Puyallup Tribe v. Department of Game of the State of Washington*, 391 U.S. 392 (1968), and *Warren Trading Post Company v. Arizona State Tax Comm.*, 380 U.S. 685 (1965).

This case presents a question of great and continuing concern to the Association and to Indians generally—the question of whether the United States still may owe a fiduciary responsibility to Indian people who have been made the subject of a so-called “termination act,” such as Public Law 83-671 here under consideration. The position of the Association is that the Ute Termination Act preserved the trust obligations of the Federal Government to the mixed-blood as well as the full-blood members of the Ute Tribe with respect to the Tribe's mineral rights and other undivided tribal assets. In short, the Association urges that Congress under the Act has perpetuated the power of the Secretary of the Interior to control disposition of certain property in which the mixed-blood Utes have an undivided interest, and that with such power goes a duty of protecting the property for its intended Indian beneficiaries.

The United States in this case denies that it has any continuing special obligations towards the mixed-blood Utes, and thus takes a position directly adverse to the Association's. Petitioners, on the other hand, are interested not only in maximizing their money recovery, but also in gaining possession of the assets here involved, and cannot be expected fully to develop the argument that such assets remain under Federal trusteeship. The Association, by contrast, is concerned exclusively with the legal relationships between the parties under a termination statute, not with

specific liability, and, therefore, would be presenting a viewpoint not otherwise adequately represented before the Court.

For the foregoing reasons, the Association requests that its motion for leave to file the attached brief *amicus curiae* be granted.

Respectfully submitted,

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General Counsel for
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Association on American
Indian Affairs, Inc.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1970

No. 1331

AFFILIATED UTE CITIZENS OF THE STATE OF UTAH, ET AL.,
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Respondents.

**BRIEF OF ASSOCIATION ON AMERICAN INDIAN
AFFAIRS, INC. AS AMICUS CURIAE**

STATEMENT

The Association on American Indian Affairs is a private, non-profit membership corporation devoted to protecting the rights and improving the welfare of American Indians. The Association is appearing in this case as *amicus curiae* because of its interest in the continuing relationship of the United States to the mixed-blood members of the Ute Indian Tribe under Public Law 83-671, the so-called Ute Termina-

tion Act.¹ The position of the Association is that the Act preserves the trust obligations of the United States to the mixed-blood as well as the full-blood members of the Ute Tribe with respect to the Tribe's mineral rights and other undivided tribal assets.

Before proceeding to an analysis of the specific provisions of the Ute Termination Act, it is relevant to note that the policy of termination has been an acknowledged failure.² The President, in his Message To Congress on Indian Affairs (H.R. Doc. No. 363, 91st Cong., 2d Sess. (1970)), recognized that the practical results of termination "have been clearly harmful" and that the economic and social condition of the affected Indians "has often been worse after termination than it was before." The facts in this case, as set forth in the District Court's detailed findings, provide more support than anyone would want for the President's statement. Fortunately, there is a basis in this case for ameliorating some of the harm suffered by the mixed-bloods as a result of this misguided legislation.

The Ute Termination Act was one of a series of termination acts enacted between 1954 and 1956 with respect to

¹ Act of Aug. 27, 1954, 68 Stat. § 68, 25 U.S.C. § 677, *et seq.*

² The Government's Brief in Opposition p. 8 notes that "over the last decade the trend in Congress has been against following a policy of termination." The President in his Message To Congress on Indian Affairs discussed in the text described the policy of termination as "morally and legally unacceptable" and requested its repudiation by the Congress. The Message further rejected the premise of termination that the Federal Government can discontinue its trusteeship responsibility for Indian communities "whenever it sees fit" and recognized that "the special relationship" between Indians and the Federal Government is not "an act of generosity" but the "result instead of solemn obligations which have been entered into by the United States Government."

various Indian tribes.³ While these statutes contain some common provisions, there also are differences reflecting differences in the status of the tribe or of the tribal property or other facts. Neither the members of the tribe nor the tribes themselves, nor the tribal property were dealt with by Congress as fungibles, and there is no such thing as a "Uniform Termination Act."

The Ute Termination Act in particular contains several provisions not found in other termination acts based on the fact that only the mixed-blood members of the Tribe were subject to termination and that certain assets of the Tribe continued under joint ownership. One of the defects in the decision of the Court of Appeals in this case is its failure to analyze the specific provisions of the Ute Termination Act in determining the impact of termination on undivided tribal property. The result is a sweeping application of the Act by the Court of Appeals which would do away with all restrictions on Federal supervision and leave the mixed-blood group without any remedy for the negligence of the agents of the Bureau of Indian Affairs with respect to tribal property still held in trust by the United States. For reasons which will be explained hereinafter, the Association believes that this harsh result may be avoided by a proper interpretation of the language of the Act.

INTEREST OF AMICUS CURIAE

The interest of the Association on American Indian Affairs, Inc., as *amicus curiae* is set forth in the Association's motion for leave to file this brief *amicus*, to which motion this brief is annexed.

³See for example, 25 U.S.C. § 891 *et seq.* (Menominee Tribe); 25 U.S.C. § 564 *et seq.* (Klamath Tribe); 25 U.S.C. § 691 *et seq.* (Western Oregon Indians); 25 U.S.C. § 721 *et seq.* (Alabama and Coushatta Indians of Texas); 25 U.S.C. § 741 *et seq.* (Paiute Indians of Utah); 25 U.S.C. § 791 *et seq.* (Wyandotte Tribe); 25 U.S.C. § 821 *et seq.* (Peoria Tribe); 25 U.S.C. § 841 *et seq.* (Ottawa Tribe); 25 U.S.C. § 931 *et seq.* (Catawba Tribe); 25 U.S.C. § 971 *et seq.* (Ponca Tribe).

ARGUMENT

THE UTE TERMINATION ACT DID NOT TERMINATE THE FEDERAL GOVERNMENT'S TRUST OBLIGATIONS WITH RESPECT TO THE UTE TRIBAL ASSETS NOT SUSCEPTIBLE OF DISTRIBUTION TO THE INDIVIDUAL MIXED-BLOOD MEMBERS OF THE TRIBE.

A. The Act Preserved the Federal Government's Trust Obligations to the Mixed-bloods With Respect to Undistributed Tribal Assets.

The position of the United States in this litigation is that any Federal obligation to the mixed-blood members of the Tribe was terminated by the Ute Termination Act and a Termination Proclamation issued by the Secretary of Interior on August 26, 1961 (26 Fed. Reg. 8042). The District Court rejected this as "too narrow a view of the Government's responsibility" and held that under the Act, "the emancipation of the mixed-bloods was only partial with reference to the transfer of their stock representing undivided interests in tribal lands and minerals." The Court of Appeals, agreeing with the Department of Justice, concluded that the Ute Termination Act had brought an "end" to the relationship between the mixed-bloods and the Government, and that the courts could not modify this termination by "the creation of some status lying between wardship and complete termination."

The inability of the Court of Appeals to find any source for a duty on the part of the Federal Government to the mixed-blood Utes after termination stems from the Court's failure to recognize that the Act preserves the Federal Government's trust responsibilities over the Tribe's undivided property. In other words, the Court below failed to distinguish between people to whom a special relationship was ended and property to which a special relationship continued.

In general, the Ute Termination Act provides for the division of the assets of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah between "mixed" and "full" blooded members of the tribe, and for distribution of the assets of the mixed-blood group to the individual mixed-bloods.⁴ A distinction is made throughout the Act, however, between tribal assets susceptible to equitable and practicable distribution; and tribal assets, such as mineral rights, which were not susceptible of such equitable and practicable distribution. No distribution of tribal assets not susceptible of equitable and practicable division was made to individual mixed-bloods under the Act.

Section 10 of the Act (25 U.S.C. § 677i) relates to the division of the tribal assets between the full-blood and mixed-blood groups. Under its terms, only the tribal assets "then susceptible to equitable and practicable distribution" were divided between the mixed-blood and full-blood groups. With regard to such tribal assets as are not susceptible to equitable and practicable distribution, section 10 states as follows:

"All unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall be managed jointly by the Tribal Business Committee and the authorized representatives of the mixed-blood group, subject to such supervision by the Secretary as is otherwise required by law, and the net proceeds therefrom after deducting the costs chargeable to such management shall first be divided between the full-blood and mixed-blood groups in direct propor-

⁴ A "full-blood" member of the tribe was defined as a member of the tribe who possesses one-half degree of Ute Indian blood and a total of Indian blood in excess of one-half. (25 U.S.C. § 677a(b)). A member of the tribe who did not possess sufficient Indian or Ute Indian blood to fall within the "full-blood class" was defined as a "mixed-blood" member of the tribe. (25 U.S.C. § 677a(c))

tion to the number of persons comprising the final membership roll of each group and without regard to the number of persons comprising each group at the time of the division of such proceeds."

Section 10 is the only provision of the Act dealing directly with the division of the tribal assets between the mixed-blood and full-blood members of the tribe. Consideration of its precise language is of critical importance to a proper application of the statute. This section provides unmistakably different treatment for the tribal assets susceptible of distribution and the assets not susceptible of distribution. Tribal assets in this latter category, including the Tribe's mineral rights, are to be "managed" jointly by representatives of the mixed-blood and full-blood groups, "subject to such supervision by the Secretary as is otherwise required by law."⁵ The "net proceeds" from such assets are to be "divided between the full-blood and mixed-blood groups in proportion to their number." The assets themselves are not divided between the two groups, the United States continues to hold title to the assets, and their management remains subject to supervision by the Secretary.

This distinction in section 10 of the Act between the assets susceptible of distribution and the assets not susceptible of distribution is maintained in other sections of the Act. For example, section 13 of the Act (25 U.S.C. § 677l), which deals generally with the distribution of assets to the individual members of the mixed-blood group, relates only to the assets covered by "the plan for the division of the assets between the two groups" (under section 10), and does not relate to the assets which were not included in such plan because they were not then susceptible to distribution.

Section 14 of the Act (25 U.S.C. § 677m), which in general authorizes the Secretary to impose a plan of distribution of the tribal assets to the individual mixed-blood members

⁵This obviously refers to the law relating to Indian land. See e.g. 25 U.S.C. § 177 and 25 U.S.C. § 396a *et seq.*

of the tribe if no such distribution is accomplished by the tribe within seven years from August 27, 1954, similarly included in its provisions only those assets "susceptible to equitable and practicable distribution," and gives the Secretary no authority to distribute to individual mixed-blood members assets not susceptible to equitable and practicable distribution.

Section 16 of the Act (25 U.S.C. § 677o), which in general provides for the termination of Federal supervision of the mixed-blood members and their property after distribution of the tribal assets to the individual mixed-bloods, likewise explicitly excepts from its provisions the "tribal property" not susceptible to equitable and practicable distribution, including all gas, oil and mineral rights of every kind. There is nothing in section 16 or in any other section of the Act providing for the termination of Federal supervision over such tribal property.

B. The Court of Appeals Failed to Distinguish Between the Distributed and Undistributed Tribal Assets in Concluding That Termination Was Final Under the Act.

The Court of Appeals and the District Court agreed that it was within the power of Congress to determine when and how termination should be effected. The District Court conclusion that emancipation was only "partial" and that a trust relationship continued with respect to the undivided mineral rights, and the Court of Appeals conclusion that termination was complete, were both based on the supposed intent of Congress.

In the view of the Association, it was the Court of Appeals and not the District Court which deviated from the statutory scheme. The fact that Congress determined to separate the tribe into full-blood and mixed-blood groups did not require the Congress to separate all of the tribal property into similar categories. Here the Congress decided that cer-

tain tribal assets would not be divided or distributed, but would simply be "jointly managed" by the two groups under the continuing supervision of the Secretary of Interior. The legislative reports state that "these undivided assets will continue to be owned and administered by the two groups." H.R. Rep. No. 2493, 83rd Cong., 2d Sess. (1954); S. Rept. No. 1632, 83rd Cong., 2d Sess. (1954). The Court of Appeals in its decision acknowledged that legal title to the "undistributed property . . . remained in the United States." Nowhere in the Act is there any provision for termination of the Secretary's trust obligations with respect to such tribal property. Nowhere in the Act is there any suggestion that the Secretary's trust obligations with respect to such property would be different for the mixed-blood and full-blood tribal beneficiaries. It is the Court of Appeals, therefore, and not the District Court, which inferred from the Act intentions which Congress did not express.

Much confusion has been caused in this case by the attempt to relate the Federal Government's continuing duty to the mixed-blood group to the provisions in section 15 of the Act (25 U.S.C. § 677 n) requiring an offer to sell by each individual mixed-blood to the members of the Tribe before any sale of his interest to non-Indians.

Section 15 in its entirety is applicable only in the event a member of the mixed-blood group determined to dispose "of his interest in the tribal assets." As we have indicated, under the Act the undivided tribal assets were never individualized and, therefore, were not subject to alienation by the mixed-blood any more than by the full-blood members of the Tribe. No individual Indian may alienate his "inchoate" share in tribal property. U.S. Department of Interior, Federal Indian Law pp. 747-748 (1958 ed.) Section 15 may impose additional responsibilities on the United States, but the basic source of the Federal Government's duty to the mixed-bloods is the fact that under the Act, the Secretary of Interior continued to hold the undivided tribal assets in trust for the mixed-blood as well as the full-blood members of the Tribe.

The contention of the Court of Appeals and the Department of Justice that termination of the individual mixed-bloods served to terminate whatever trust obligations the Federal Government had with respect to the undivided tribal assets appears to be based not on the provisions of the Act, but on an assumption that the change in status of the mixed-bloods after termination cancelled the Federal Government's obligation to supervise the management of the tribal assets for the benefit of the mixed-blood group as well as the full-blood group.

This assumption is based on erroneous legal principles as well as on a misconstruction of the Act. There is no principle of law which requires the beneficiary of a trust, whether an individual or a group, to be under legal disability. "Obviously the property, real or personal, may be held in trust for a perfectly competent individual who is nobody's ward, and, on the other hand, perfect title to land or any other property may be vested in a lunatic or a minor whose every act is subject to a guardian's physical or legal control". U.S. Department of Interior, Federal Indian Law p. 564 (1958 ed.) The fact that the individual mixed-blood members of the Tribe were no longer wards of the Federal Government after termination has nothing to do with whether the Federal Government continues to hold the undivided tribal assets in trust for them.⁶

⁶The Termination Proclamation issued on August 26, 1961 (26 Fed. Reg. 8042) under section 23 of the Act (25 U.S.C. § 677v) provides that effective midnight, August 27, 1961, "such individual [mixed-blood] shall not be entitled to any of the services performed for Indians because of his status as an Indian." Nothing in the Termination Proclamation or in section 23 of the Act purported to terminate the trust status of the undivided assets of the Tribe. Cf. *Menominee Tribe v. United States*, 391 U.S. 404 (1967). It is significant that Congress amended the act following the effective date of the Termination Proclamation to provide that the stock held by the mixed-bloods in the Ute Distribution Corporation could not be subject to mortgage, pledge, or similar process. Pub. Law 87-698, 76 Stat. 597, 25 U.S.C. § 677i. The purpose of this amendment was to "insure that the mixed-bloods' corporation stock may not be lost

There is no need to consider in this case whether Congress could have terminated this Federal trust despite retention of legal title in the undivided tribal assets. Such an intent is never to be "lightly" inferred: *Menominee Tribe v. United States*, 391 U.S. 404, 413 (1967). It cannot be reasonably inferred from a statute under which there was no express termination of the Federal Government's duties to the mixed-blood or full-blood tribal groups with respect to the undistributed tribal assets; title to these assets continued in the United States in trust for their Indian beneficiaries, and even their management by the "authorized representatives" of the mixed-bloods and the full-bloods was "subject to such supervision by the Secretary as is otherwise required by law."

CONCLUSION

By reason of the foregoing, the Association urges that the Court conclude that the Ute Termination Act did not terminate the Federal Government's trust obligations with respect to the tribal assets which were not distributed to the individual members of the mixed-blood members of the tribe, including specifically all gas, oil and mineral rights of every kind. Based on the findings of fact by the District Judge, we would urge also that the Court conclude that the Federal Government was negligent in the performance of its

by being offered as security for minor debts. . . ." S. Rept. 2000, 87th Cong., 2d Sess. (1962); H. Rept. 2345, 87th Cong., 2d Sess. (1962). This amendment certainly suggests an exercise of continuing Federal supervision of the mixed-bloods after termination contrary to the Government's contention that termination was "final." Cf. *Crain v. First National Bank of Oregon*, 324 F.2d 532 (9th Cir. 1963).

duties as trustee of such tribal assets and that such negligence was the proximate cause of the damages suffered by the mixed-bloods in this case.

Respectfully submitted,

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IN THE
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OCTOBER TERM, 1970

70-78

No. 1331

**AFFILIATED UTE CITIZENS OF THE STATE
OF UTAH, ET AL.,**

Petitioners,

—v.—

UNITED STATES, ET AL.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT**

BRIEF FOR PETITIONERS

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1970

No. 1331

~~AFFILIATED UTE CITIZENS OF THE STATE~~
OF UTAH, ET AL.,

Petitioners,

—v.—

UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR PETITIONERS

OPINIONS BELOW

The orders of the United States District Court for the District of Utah entering judgment for plaintiffs in *Reynos v. First Security Bank* (Reynos herein), and dismissing *Affiliated Ute Citizens of the State of Utah v. United States* (AUC herein) on the merits and for lack of jurisdiction, are unreported (A.¹ 573

¹"App." refers to the Appendix of pertinent Statutes and Regulations appearing at the back of this brief. "A" refers to the separately bound Appendix of proceedings herein. "E" refers to the Exhibit volume of the Appendix. "R" refers to the Record.

and 564, respectively). The opinions of the Court of Appeals for the Tenth Circuit reversing the *Reynos* judgment and affirming the dismissal of AUC are reported at 431 F.2d 1337 and 1349, respectively (A. 576 and 587).

JURISDICTION

The decisions of the Court of Appeals were simultaneously filed in June 19, 1970. Motions for rehearing in each case were simultaneously denied on November 14, 1970 (A. 588). A petition for rehearing in *bane* was filed in *Reynos* but was not considered (A. 3). The Petition for Certiorari was filed on February 9, 1971 and granted on April 19, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

STATUTES AND REGULATIONS INVOLVED

The Ute Termination Act (Termination Act) is published at 25 U.S.C. §§ 677-677aa, and is reproduced in its entirety at App. i-xviii. The pertinent regulations under the Termination Act, formerly published at 25 C.F.R. part 243 are reproduced at App. xviii-xx. The relevant securities provisions are section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 adopted thereunder (17 C.F.R. 240.10b-5) (Rule 10b-5 or Rule) reading as follows:

15 U.S.C. § 78j:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Rule 10b-5:

It shall be unlawful for any person, directly or indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,

(1) to employ any device, scheme, or artifice to defraud,

(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security.

QUESTIONS PRESENTED

1. Whether bankers who contract to enforce the Indian laws and regulations applying to an Indian corporation, by acting as its transfer agent, depository for the individual Indian's stock, and agent for the conduct of the business of the corporation, violate Rule 10b-5:

(a) When they secretly act simultaneously as market makers for the stock, or as agents for or in aid of non-Indian purchasers?

(b) When they cause stock transfers to be made in a manner other than as specified in the Indian laws and regulations?

(c) When they withhold information designed to discourage the Indian from selling his stock?

(d) When they alter or misrepresent documents filed with government officials primarily responsible for supervising the sale of Indian property?

2. Does the reference to conduct "in connection with the purchase or sale of any security" in Rule 10b-5 mean that the defendant must be acting in his own interest, as a purchaser or seller, for a profit?

3. Under an Indian termination act, declaring a phased withdrawal of Government services rendered to Indians and an end to supervision of their restricted property:

(a) Are the Indians deprived, by implication, of any interest in their property, or do they lose their cultural identity as American Indians so that benefits of law other than under Federal statutes are eliminated by implication?

(b) Is BIA's administrative modification or acquiescence in the modification of termination procedures prescribed by Congress, so that protections to Indians and their property are eliminated or reduced, actionable negligence?

(c) Does publication of a "termination proclamation" eliminate the Government's duty to Indians with respect to limited supervisory functions Congress directed be performed after publication, or as to property over which the Government retains limited supervisory control?

4. The subsidiary question in *AUC* of whether the United States District Court has jurisdiction to determine an Indian's rights in property, including management rights, purportedly granted under a termination act?

5. The subsidiary question in *Reyes* of what relief is appropriate to the individual Indian?

STATEMENT OF THE CASE

A. *Summary of the Proceedings Below.*

AUC is an unincorporated association of all terminated Ute Indians formed by the Secretary of Interior (Secretary).

AUC's complaint sought confirmation of rights under the Termination Act (1) in its own behalf, to exercise management privileges for its members with respect to their unadjudicated legal claims and the mineral estate in the Uintah and Ouray Reservation (Reservation), and (2) on behalf of its 490 Indian members, declaring them to be vested with beneficial rights in the Reservation minerals. The *Reynos* plaintiffs are members of AUC who seek damages for their loss of mineral royalties and Indian claims payments from and after 1963-64, which occurred when the Bureau of Indian Affairs (BIA) caused the terminated Utes' share of the cash proceeds to be paid to a corporation in which they formerly held stock. The Indians had sold, or were induced to sell, their stock in transactions which the trial judge determined to be fraudulent, and the Indians' shares in the cash proceeds were paid to the non-Indian purchasers.

The Complaint in AUC was dismissed for alleged failure to state a cause of action and lack of jurisdiction. The trial judge awarded damages to the *Reynos* plaintiffs against First Security Bank of Utah, N.A., (Bank) and its officers, Gale and Haslem, under Rule 10b-5, and against the United States for negligent administration of the Termination Act. The Court of Appeals for the Tenth Circuit affirmed the dismissal of AUC, and reversed the judgment in *Reynos*, ruling that the United States owed no duty to the terminated Utes and that the Bank and its officers had not violated Rule 10b-5.

B. *Summary of the Termination Act.*

The Termination Act provided that as to 27.16186% of the membership of the Ute Indian Tribe (Tribe) federal supervision and services to the Indians would be ended² and restrictions on their property would be removed.³ The mineral estate in the Reservation, which was both difficult to divide and an intangible asset, the terminated Utes could be expected

²Section 23, 25 U.S.C. §677v (1964), App. xvi.

³Section 16, 25 U.S.C. §677o (1964), App. xiii.

to have trouble dealing with, was excepted from the removal of "restrictions" and was to be held by the United States, with the beneficial interest retained in common among the terminated and non-terminated Utes.⁴ The "termination proclamation" ending supervision of the individual Indian was published on August 26, 1961, but Congress directed that real property be subject to limited supervision by the Secretary, pursuant to a right of refusal in the "members of the tribe" until August 27, 1964.⁵

The mineral estate was and is subject to joint management by the "authorized representative" of the terminated Utes and the Tribe as the representative of the non terminated Utes.⁶ Title to the mineral estate remains in trust with the United States for the Indians beneficially entitled to it.

C. *The "Authorized Representative" Problem.*

AUC claims that it is the "authorized representative" specified in the Termination Act, and that Ute Distribution Corporation (UDC) was improperly substituted in its stead. The authorized representative is empowered to act with the Tribe in the approval of mineral leases, but more importantly, represents the persons entitled to the cash proceeds from the minerals. If UDC is the authorized representative, the non-Indian purchasers of the UDC stock are entitled to those payments. If AUC is the proper authorized representative, those who are entitled are its Indian members.

The Termination Act provided that the authorized representative was to be selected by "an appropriate constitution and bylaws which shall become effective when ratified by a majority vote of the adult mixed-blood members of the tribe at a special election authorized and called by the Secretary."⁷

⁴*Id.* See also section 10, 25 U.S.C. §677i (1964), App. vi at viii.

⁵Section 15, 25 U.S.C. §677n (1964), App. xii.

⁶Section 10, 25 U.S.C. §677i (1964), App. vi at vii.

⁷Section 6, 25 U.S.C. §677e (1964), App. iii.

The Secretary approved the formation of AUC as the authorized representative on April 4, 1956, and the constitution and bylaws of AUC were ratified by a majority vote of the adult mixed-blood members of the tribe in the manner specified by Section 6 of the Termination Act on May 12, 1956.⁸ Thereafter AUC was recognized as the authorized representative by the United States for a period of several years.

On December 9, 1958, BIA caused UDC to be formed under the laws of the State of Utah. UDC was formed by 5 incorporators and its charter recited that it was formed "to manage jointly with the tribal business committee" the terminated Utes' interest in the mineral estate, but it was not formed pursuant to a "constitution and bylaws" nor was it "ratified by a majority vote of the adult mixed-blood members of the tribe at a special election authorized and called by the Secretary."⁹

Thereafter BIA "acquiesced" in UDC's acting as authorized representative and paid all proceeds from the Indian claims and the mineral estate to UDC to be paid to its stockholders in the form of dividends. AUC, which had been recognized as the "authorized representative" was ignored, although AUC never purported to delegate its powers to act as authorized representative.¹⁰

⁸See defendants exhibits U-C, E. 151 at 162, and U-D, E. 163. (All exhibits were received in bulk pursuant to the Pre-Trial Order. A.24. Pertinent testimony concerning particular exhibits is hereafter indicated.)

⁹Plaintiffs exhibit 16-A, E. 1. In plaintiffs exhibit 22, E. 18, the "general membership" of AUC purported to "accept such articles of the Ute Distribution Corporation as it is thus written" by a vote of 42 for and 5 against, far short of a majority of the 490 mixed-bloods. The meeting was not a "special election authorized and called by the Secretary" for the purpose of selecting an authorized representative. Even were deficiencies absent and even if the corporate charter could be considered a "constitution and bylaws," the purported action of the general membership was abortive in view of the plain provision of Section 6 that "*in the event that no such approved organization is effected, any action taken by the adult mixed-blood members, by majority vote . . . shall be binding upon said mixed-blood members.*" (Emphasis added) An approved organization *had* been effected prior to that date.

¹⁰Resolution no. 59-8, which is not contained in the record, was adopted on January 1, 1959, purporting to delegate to UDC the powers contained in Article 5, Section 1, Paragraph (b) of the AUC constitution. That

D. *The UDC Stock Sales.*

The substitution of a corporate charter for the constitution and bylaws prescribed by the Termination Act injected a new element into Congress' termination program—corporate stock is subject to sale, but membership in the unincorporated association, like a person's citizenship, is not. Apart from the question of the propriety of the formation of UDC, however, the sales of UDC stock to non-Indians were accomplished in a manner which deviated from the regulations adopted by the Secretary. That is, whether the Secretary had authority to do so or not, he did form UDC and promulgate regulations concerning it, and if he had required strict compliance with those regulations the improper sales could not have occurred. The *Reynos* plaintiffs claim the action of BIA in permitting the deviation was negligent and that the course of business employed by the Bank's officers pursuant to the deviations amounts to fraud.

Each terminated Ute was credited with 10 shares in UDC, which were held in his name by the Bank at its offices in Salt Lake City, over a hundred miles from the Reservation. The stock bore a *red letter legend*, warning the Indian of its value, and further legends advising him of restrictions on its sale.¹¹ The purport of the red legend was to advise the shareholder of the essential declaration of Congress that the mineral estate *should not be sold*. Any protection to the Indian was eliminated, however, by the additional legend on the reverse side¹² declaring that the stock *could* be sold as if it were real property. Neither warning was communicated to the Indians, however, because the Bank refused to permit them access to their stock certificates, even when they requested that it do so,¹³

Resolution did not have the effect of delegating the powers of authorized representative, however, for those powers are contained in Article V, Section 1, Paragraph (a). See defendants exhibit U-O, E. 151 at 55.

¹¹Plaintiff's exhibit 101, E. 106, 107, A.28.

¹²See also, 25 C.F.R. § 243.12 (1962) (deleted 1969), App. xx.

¹³A.516. See also, plaintiff's exhibit 48-Z, A. 284, 287.

and made no alternative effort to advise the Indians of the warnings in any way.¹⁴

The BIA then established the Bank as transfer agent to supervise the mechanics of sale and to assist UDC as "business agent."¹⁵ The stock sales in question took place largely during calendar years 1963 and 1964, after termination of the person but before the end of the first refusal option available to the members of the tribe.

The regulations stipulated that in the event of sale there be a prior offer to the "members of the tribe" at a stated cash price, to be paid to the Superintendent of the Uintah and Ouray Agency (Superintendent).¹⁶ If the offer was not accepted, the Indian could sell to any person at the same or a greater price and on the same terms and conditions.¹⁷ In that event, the Indian was to endorse the certificate itself¹⁸ and the Superintendent was to attach his certificate that the regulations had been complied with and deliver it to the non-Indian purchaser.

The Bank found these regulations inconvenient, however, and proposed an alternate procedure which was easier for it to administer,¹⁹ and which also encouraged the transfers which Congress sought to discourage, if not to prevent entirely. The alternate procedure permitted the transfer on a separate stock power and certification to the *Bank*, rather than the *purchaser*, that the restrictions had been complied with. In lieu of pay-

¹⁴ A. 287-88.

¹⁵ A. 468-69. The agreement is plaintiff's exhibit 18, E. 13, A. 275-76.

¹⁶ See the Articles of Incorporation of UDC, Article VIII, in plaintiff's exhibit 16A, E. 1 at 6, and the form used for the offer in plaintiff's exhibit 50, E. 41, A. 207.

¹⁷ 25 C.F.R. § 243.8 (1962) (deleted 1969), App. xx, and plaintiff's exhibit 50 E. 37, A. 207.

¹⁸ The face of the certificate reads: "transferable only . . . upon surrender of this Certificate properly endorsed." Plaintiffs exhibit 101, E. 106, A. 28. The regulations incorporated all restrictions printed on the certificate. 25 C.F.R. § 243.12 (1962) (deleted 1969), App. xx.

¹⁹ A. 519.

ment through the Superintendent, the Indian was required to furnish an affidavit to the effect that he had been paid.²⁰ The Superintendent was informed of the changes by the Bank and he acquiesced in them, although they were never made a part of the regulations.²¹

The officers of the Bank, at its Roosevelt office located on the Indian Reservation, then began trafficking in the stock—performing functions which were substantially those of a broker in the regular securities markets. They located purchasers of the stock throughout the United States, who maintained substantial deposits in the bank for the purpose of making purchases.²² They also arranged for agents, usually used car dealers, who contacted Indians during periods of economic crisis, sometimes contrived (as in the case of Melvin Reed, who was subjected to a large fine for drunkenness by one of the Bank officers acting in the capacity of Justice of the Peace²³), and sometimes already existent (as in the case of Letha Wopsock who needed money because she had been requested by the Chief to operate a concession stand for the annual Sun Dance²⁴). Such market as ever existed for the UDC stock was largely maintained by the Bank officers for their out of state clients,²⁵ at prices fixed by the Bank officers in Roosevelt and at its central office in Salt Lake City.²⁶

The occasional sales which were not connected with the Bank officers, either as principal or agent, were determined by the trial judge to have been influenced by their practices. The

²⁰ A. 518-519.

²¹ A. 505-06.

²² A. 500, 522. See also plaintiffs exhibit 104, E. 108-119, A. 76.

²³ A. 484-86.

²⁴ A. 41.

²⁵ The trial judge so concluded at A. 529.

²⁶ See plaintiffs exhibit 58, E. 64, A. 330, where the trust officers of the Bank determined that "\$5,000 [for 10 shares] may be too much, a value of approximately \$3,500 may be nearer to the real value." The Bank officers then established \$350 per share as the standard price. E.g., A. 480.

individual circumstances of the Indians — their destitution, naivete, chronic alcoholism — were important facts in the trial judge's conclusions and are spelled out in some 74 pages of meticulous fact findings which cannot be detailed here. The mechanics of these sales fit a typical pattern, however.

After an Indian seller was located, he was required to sign two blank forms,²⁷ and his signature was notarized and "guaranteed" by the Bank officers. The blanks were later filled in with the name of the purchaser and although the Indian was paid primarily with used cars or other merchandise, the cash figure stipulated in the offer of sale the Indian had earlier filed with the Superintendent was always inserted in the forms. In most cases the completed forms were sham to the extent that the Indian did not deal with the purchaser indicated nor did he receive the amount of cash recited. In most cases he received whatever small amount of cash was required to meet his emergency needs and a used car or other chattel which was represented as making up the difference, for which he gave up mineral rights which plaintiffs' expert witnesses appraised at over \$28,000 per share.²⁸ Often the Indian had no use for the car, as with Mrs. Case who could not even drive and had to get someone to take it home for her.²⁹ She had to take the car, however, to get the desperately needed cash.

The forms were then submitted to the Realty Officer for the BIA, who duly noted their irregularities but took no action because she had been advised by the Superintendent to do nothing to protect the Indian.³⁰ The Superintendent then certi-

²⁷ Plaintiff's exhibit 72A, E. 97, A. 72.

²⁸ See footnote 165, *infra*.

²⁹ A. 483, 307.

³⁰ See plaintiff's exhibit 54, E. 55, A. 211-13, where R. O. Curry, the son of Oran Curry, protested irregularities in the sales procedure. The Realty officer's note in the margin reads: "Note for Files. This memo was discussed with Mr. Z [Superintendent Zollar], but he did not think the points raised should be a further concern of ours since the members have been terminated; the stock is unrestricted, and they are therefore free to do whatever they wish as long as the Bureau complies with CFR 243 which we still do til 8-27-64."

fied to the Bank that the sale was in accordance with the regulations, and the stock was transferred.

SUMMARY OF ARGUMENT

1. (a) The conduct of the Bank and its officers, in withholding information printed on the stock certificate designed to discourage the Indian from selling, failing to disclose their brokerage activities, acting as agent for others in disregard of their fiduciary duties to the Indians, establishing a transfer procedure which varied from the requirements imposed by the Indian laws, and in general preying upon the less informed Indians and exploiting their economic difficulties, were matters material to the Indian's sales which violated each of the three separate clauses of Rule 10b-5.

(b) With respect to the "non-principal" transactions, the defendants need not be directly engaged as a purchaser or seller, *Mills v. Electric Auto-lite Co.*, 396 U.S. 375 (1970), nor in privity of contract with the seller, *Heit v. Weitzen*, 402 F.2d 909 (3rd Cir. 1968) cert. denied 395 U.S. 903 (1969); *Mitchell v. Texas Gulf Sulphur Co.*, F.2d (10th Cir. April 26, 1971). Liability in non-principal transactions is particularly appropriate under the "directly or indirectly" and "in connection with" language of the Rule, and under the related concepts of conspiracy and aiding and abetting. *Brennan v. Midwestern United Life Insurance Co.*, 259 F. Supp. 673 (N.D. Ind. 1966) aff'd 417 F.2d 147 (7th Cir. 1969) cert. denied 397 U.S. 989 (1970).

(c) Liability may not be circumscribed on the theory that the alleged misconduct is a common banking practice, nor may the defendant interpose a defense based upon lack of reliance. *Mills v. Electric Auto-lite Co.*, supra; *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963). The appropriate limit of Rule 10b-5 liability should be causation, but only causation in the "but for" sense.

2. (a) Indian laws must be construed liberally, in the manner most favorable to the Indian. *Choate v. Trapp*, 224 U.S. 665 (1912). The policy of liberal construction also applies to statutes giving Indians a forum in which to enforce their rights. *McKay v. Kalyton*, 204 U.S. 458 (1907). For the purpose of jurisdiction under 25 U.S.C. §345, an Indian may test his beneficial rights in the Reservation mineral estate which was granted under the Termination Act. Such an interest is also within the meaning of the term "allotment."

(b) AUC should be determined to be the "authorized representative" under the Termination Act because it was formed by a constitution and bylaws, approved by majority vote of the terminated Utes who were adults, at a special election called for that purpose by the Secretary, while UDC was simply formed under state law without complying with 25 U.S.C. §677e. The unincorporated association was prescribed by Congress to exercise the authorized representative powers, to prevent transfer of those rights to non-Indians, with the consequent disruption of Indian affairs. The Secretary should not be permitted to substitute his judgment for that of Congress in determining the proper form of authorized representative.

(c) The United States was negligent in implementing the Termination Act by (1) allowing UDC to replace AUC as authorized representative, (2) failing to require compliance with the sales procedure prescribed by the regulations (in particular, failure to require cash payment and compliance with formal requirements which would have made the fraud of others unlikely), (3) failing to protect the "members of the tribe" in their right of first refusal and (4) in failing to protect the Indian's interest in the mineral estate, which was retained in the hands of the United States subject to "restrictions."

3. Appropriate relief should be devised to make the Indians who sold their stock substantially whole, yet not penalize those who did not sell. *I. I. Case Co. v. Borak*, 377 U.S. 428 (1964). Appropriate relief in this case should include (1) con-

firmation of AUC's management rights as authorized representative, (2) confirmation of AUC's members' rights to beneficial title in the minerals (which will benefit sellers and non-sellers alike) and (3) requiring the defendants to reimburse all selling shareholders in an amount equal to their share of the funds delivered to UDC from the time of sale to the date of judgment upon remand.

ARGUMENT

I

THE CONDUCT OF THE BANK AND ITS OFFICERS VIOLATED RULE 10b-5

A. *Statement.*

First, and fundamentally, the plight of the terminated Utes is the result of violations of Rule 10b-5 by the Bank and its officers. The United States, whose liability is limited to its negligence in failing to require strict compliance with the mandate of Congress, is not a defendant in the fraud claims.³¹

The trial judge entered exhaustive findings, comprising 74 pages of the Appendix, dealing with every facet of the Rule. The Court of Appeals not only rejected the findings, but undertook to inject additional elements into Rule 10b-5's formula so that the misconduct of the Bank and its officers could not qualify as its proscribed product. This was done in two basic ways. First by construing the required "participation" (which was evidently shorthand by the Court of Appeals for the terms "in connection with" and "directly or indirectly" employed in the Rule), and the supposed defenses of lack of reliance or causation, in such a manner that the bank and its

³¹ The Bank is also responsible for the deviations from Congressionally prescribed procedures. A. 518-19. The Bank's letter directing the change in the transfer procedure is defendants exhibit FD, E. 131, A.208.

officers were not within the equation, at least in what may be characterized as the "non-principal" transactions—those sales in which the Bank officers acted in the capacity of broker or where their connection was merely collateral to the sales transaction. Second, by viewing the activities of the Bank and its officers, arising in juxtaposition with the Indian laws, as *banking* transactions and not *securities* transactions and therefore not subject to regulation under the Rule.

Both of these approaches raise basic problems under Rule 10b-5 which have never before received the attention of this Court.

The 74 pages of detailed findings of fraud obviously cannot be summarized in the space of this brief, nor may the evidence supporting them be reviewed in any meaningful way. Such findings are traditionally accorded a presumption of accuracy, but in this case the Court of Appeals rejected them out of hand, frequently charging that they were not supported by evidence, but without any analysis of what the evidence on any point was or wherein it was deficient. Instead, it was observed that "each plaintiff states a separate cause against each of such defendants,"³² followed by a discussion of the defendants' misstatement of the prevailing market price "in those instances wherein they purchased stock for sale at a personal profit,"³³ as if misstatement of price were the only matter at issue. It is important, therefore, to briefly review the trial judges' determinations as a prelude to discussion of the legal questions presented by their rejection on appeal.

As regards clause (b) of the Rule (misstatement or omission of material fact), the Court of Appeals acknowledged that misstatements as to price affected *some* plaintiffs, but ignored the withholding of the important legends which affected *all* plaintiffs. The defendants also concealed their market making

³² A. 583.

³³ A. 585.

activities and the substantial funds on deposit for stock purchases. As regards clause (a) of the Rule (schemes to defraud), the bank officers, both directly and through arrangements with used car dealers,³⁴ acquired and sold the stock, employing devices which circumvented the Regulations — the requirement that the Indian receive a minimum advertised cash consideration in particular. As regards clause (c) of the Rule (any course of business which would operate as a fraud), the Bank contracted to see that the transfers were properly made,³⁵ but nevertheless notarized affidavits known to be false³⁶ and prevented the corporation from protecting the Indians by falsely assuring its officers that payment of the full advertised price in cash was being required as a condition to the Bank's approval of the sale.³⁷ Moreover, in an act which directly aided each and every stock transfer, the bank prescribed the affidavit system itself, which was the ultimate undoing of the Indians, in violation of the requirements of the Regulations. Gale and Haslem also abused the inside information concerning the corporation which was in their possession³⁸ and performed significant steps in implementing each of the "non-principal" sales.³⁹

This Court is thus presented with an assortment of acts which *could* be viewed as violating the provisions of the Rule, ranging from simple abuse of confidential relationships of a sort which is common in other commercial relationships, extending through breach of federal regulations dealing with matters collateral to the securities transaction, and including falsification of documents which could be considered criminal in certain settings.⁴⁰ This Court has never directly decided what conduct is proscribed by the Rule, though it has treated

³⁴ See note 65 *infra*, and accompanying text.

³⁵ A. 513, 276.

³⁶ A. 501.

³⁷ A. 516, 336-37; plaintiff's exhibit 58, E. 80, A. 336.

³⁸ A. 521.

³⁹ A. 523.

⁴⁰ See e.g., 18 U.S.C. §1001 (1964).

closely related questions under the Exchange Act and other federal securities laws which are in *pari materia*.⁴¹

B. *A Showing of "Privity" or direct "Participation" in a Securities Transaction, "For a Profit," is Not Required Under the Rule.*

The Court of Appeal's dominant thrust was to exclude the defendants from liability in the "non-principal" sales by holding that they were not sufficiently connected with the securities transaction unless they were *personally* involved, *for a profit*. The activities found by the trial judge were not considered a sufficient "participation," in the view of the Court of Appeals.

The record shows that the defendant Gale purchased for resale *for his personal profit* ten shares of UDC stock from two of the plaintiffs.

The record does not show whether or not the defendant Gale *participated for his personal profit or derived a personal profit* from the purchase by other persons of shares of stock from the plaintiffs.

As to the elements to be established, the record shows that the individual defendants made a misstatement of a material fact in representing, *in those instances wherein they purchased stock for sale at a personal profit* . . .⁴² (Emphasis added).

In so holding, the Court of Appeals severely restricted the language of the Rule, which prohibits "any" fraudulent practices accomplished "directly or indirectly" or "in connection with" the purchase or sale of "any" security.⁴³

⁴¹ SEC v. National Securities, Inc., 393 U.S. 453 (1969); SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180 (1963).

⁴² A. 583-85. See footnote 92, *infra*.

⁴³ See Amicus Curiae Brief for SEC in Manhattan Casualty Co. v. Bankers Life and Casualty Co., Docket No. 1159 (October Term, 1970) at 17, where it was said that the restriction "that the fraud must affect the

1. The Defendant Need Not Be a "Purchaser" or a "Seller".

The Court of Appeals distinguished the direct purchases by the Bank's agents from the "non-principal" transactions, finding liability only in the former instances and then only because of a misrepresentation as to *price*. The literal effect of the distinction was to exclude fraud merely incidental to a securities transaction from the Rule's ban, even if its avowed purpose is to affect the purchase or sale of securities or aid others in a fraudulent purchase. The holding bears overtones of the so-called "Birnbaum doctrine,"⁴⁴ which is currently undergoing review by this Court.⁴⁵ Because it is being extensively briefed and argued in other proceedings before this Court, we shall not dwell long on this aspect of the case. Even if any aspects of the Birnbaum doctrine should survive this Court's review, however, the concept has never been applied so mechanically as by the Court of Appeals herein.

In the closely related context of proxy solicitations incident to a merger under section 14(a) of the Exchange Act, this Court has recently held that the effect of allegedly misleading practices upon the Congressional purpose of ensuring full and fair disclosure must be considered in determining if a cause of action is stated.⁴⁶ The Courts of Appeals,⁴⁷ including the Second

value which changes hands in the security trade itself" is contrary to the prior decisions of this Court, and at 21, where it was observed that the Rule "does not specify which material facts must be misrepresented or omitted before a cause of action for federal securities fraud arises; the rule speaks of 'any' untrue statements of material facts . . . The presence of misrepresentations with respect to the investment value of the securities that are the subject of the securities transactions has never before been thought necessary."

⁴⁴ See *Birnbaum v. Newport Steel Corp.*, 193 F.2d 461 (2d Cir. 1952), *cert denied*, 343 U.S. 956 (1952).

⁴⁵ See *Manhattan Casualty Co. v. Bankers Life and Casualty Co.*, Docket No. 1159 (October Term, 1970).

⁴⁶ *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970).

⁴⁷ See, e.g., *Herpich v. Wallace*, 430 F.2d 792 (5th Cir. 1970) *cert. denied* U.S. (March 1, 1971); *Kahan v. Rosenstiel*, 424 F.2d 161, 172 (3rd Cir. (1970), *cert. denied, sub nom. Glen Alden*

Circuit⁴⁸ which authored the Birnbaum doctrine, have frequently refused to apply the doctrine in cases under Rule 10b-5 in such a fashion that fraudulent practices of the sort the Rule was clearly directed against are exempted, even though those practices are not a part of a securities transaction in the customary sense.⁴⁹ The Securities and Exchange Commission, whose views should be accorded great weight, has said of the "in connection with" language: "The Commission [believes] the phrase does no more than confine Section 10(b) to cases in which securities are involved as distinct from fraudulent conduct generally."⁵⁰

2. Privity of Contract Should Not be Required.

The Court of Appeal's requirement of direct participation, for a profit, further emasculates the Rule by injecting a requirement of privity into the equation. Moreover, it is privity of contract, rather than mere privity to the false statement or misleading practice, which the Court of Appeals has required. Thus, though Rule 10b-5 is universally acclaimed as an *expansion* of the common law concept of fraud,⁵¹ the Court of Appeals has read it much more restrictively, for even at common law a showing of privity was not required in all cases.⁵²

Corp. v. Kahan, 398 U.S. 950 (1970); Hooper v. Mountain States Securities Corp., 282 F.2d 195 (5th Cir. 1960), *cert denied*, 365 U.S. 814 (1961); Errion v. Connell, 236 F.2d 447 (9th Cir. 1956).

⁴⁸ See A. T. Brod & Co. v. Perlow 375 F.2d 393 (2d Cir. 1967); Vine v. Beneficial Finance Co., 374 F.2d 627 (1967); Schoenbaum v. Firstbrook, 405 F.2d 215 (2d Cir. 1968), *cert denied*, 395 U.S. 906 (1969).

⁴⁹ See Amicus Curiae Brief of SEC in Manhattan Casualty Co. v. Bankers Life and Casualty Co., Docket No. 1159 (October Term, 1970) Pages 24-25 and authorities there cited.

⁵⁰ Brief of SEC Amicus Curiae in support of the Petition for Certiorari in Manhattan Casualty Co. v. Bankers Life and Casualty Co., Docket No. 1159, (October Term, 1970), page 8.

⁵¹ See, e.g. A. BROMBERG, SECURITIES LAW: FRAUD, S.E.C. RULE 10b-5, §3.2 (1969).

⁵² See, e.g., Pasley v. Freeman, 100 Eng. Rep. 450 (K. B. 1789); Peek v. Gurney 43 L. J. (n.s.) 19 (1873). *Accord*, Joseph v. Farnsworth Radio & Television Corp., 198 F.2d 883, 885 (2d Cir. 1952) (dissent); *Comment*, 4 STAN. L. REV. 308 (1952).

When it is considered that the Court of Appeals did recognize a misrepresentation as to value, at least, as a fraudulent practice under the Rule, one must grasp for the Court of Appeal's liability concept. If Gale, acting as agent for Elmo Matthews⁵³ or Bernice Vannoy⁵⁴ in Phoenix, or Haslem acting as agent for the Shaw Trust⁵⁵ or Walter K. Howard⁵⁶ in Illinois, cannot be liable for their misrepresentations, could the out of state purchasers who were their principals and who were neither party to nor had knowledge of any misrepresentations be liable? If they could be, then how could the Bank be excused of liability for the activities of Gale and Haslem, or for similar activities of the Bank officers in Roosevelt and Salt Lake City.⁵⁷ If neither the out of state principals nor the Bank may be liable, then has not the Court of Appeals made a mockery of the implied remedy this Court created in the *Borak*⁵⁸ case? Has not a convenient avenue been opened for the commission of fraud with impunity, through the use of agents?

This Court's considered dictum in *SEC v. Capital Gains Research Bureau Inc.*,⁵⁹ is its only expression on the subject:

Even in a damage suit between parties to an arm's-length transaction, . . . "it is not necessary that the person making the misrepresentation intend to cause loss to the other or gain a profit for himself" . . . "(T)he fact that the defendant was disinterested, that he had the best of motives, and that he thought he was doing the plaintiff a kindness, will not absolve him from liability, so long as he did in fact intend to mislead." (citations omitted)

⁵³ See plaintiff's exhibit 68C, E. 95, A. 119. See also plaintiffs exhibit 104, E. 108-19, A. 76, which is the record of Matthews account.

⁵⁴ See plaintiff's exhibit 65 B, E. 93, A. 64.

⁵⁵ See plaintiff's exhibit 64J, E. 87, A. 458, and Haslem's handwritten summary of profits, plaintiff's exhibit 64K, E. 89.

⁵⁶ See plaintiff's exhibit 64 H, E. 86, A. 461.

⁵⁷ See plaintiffs exhibits 64D, E. 85, and 66, E. 94, A. 450 offering the trust department "another snicker" (i.e. a financial gratuity).

⁵⁸ *J. I. Case Co. v. Borak*, 377 U.S. 426 (1964).

⁵⁹ 375 U.S. 180, 192n 39 (1963).

The Court of Appeals was directed to the foregoing dictum, but merely brushed it aside with its observation that "these [SEC enforcement proceedings] are from an entirely different position."⁶⁰ Presumably, the reference was to the assumption of some that SEC need not make as stringent a showing when it seeks to apply the "mild prophylactic" of injunctive relief as when a private litigant seeks relief directly by way of money damages. Surely that is true in the sense that neither damages nor causation need be shown as a prerequisite to SEC injunctive relief, but beyond that no reason is apparent why the other elements of the Rule — fraud, deceit, misrepresentation, in connection with, etc. — should have a different meaning in the two settings.

It would be a curious anomaly, we submit, if the stockholder the Rule is designed to protect, particularly stockholders such as these Indian plaintiffs whose need for protection is maximum, must make a stronger showing on the fundamental ingredients of the Rule when they bring suit in their own behalf than SEC must do when it acts indirectly in their right. Therefore, this Court should now either apply its *Capital Gains* and *Borak* dictum, or declare that such remedies are available only to SEC when it seeks an injunction.

The federal courts have been rather consistent in their reading of the "in connection with" and "directly or indirectly" language of the Rule as not implying any privity requirement. *E.g. Heit v. Weitzen*:⁶¹ "There is no necessity for contemporaneous trading in securities by insiders or by the corporation itself. 'Rule 10b-5 is violated whenever assertions are made . . . in a manner reasonably calculated to influence the investing public. . .'"

⁶⁰ A. 586.

⁶¹ 402 F.2d 909 (2d Cir. 1968), *cert. denied*, 395 U.S. 903 (1969). See also *Meisel v. North Jersey Trust Co.* 218 F. Supp. 274, 279 (S.D.N.Y. 1963) (the Rule is violated if the defendant "knew that anything it did or said, or failed to do or say, would influence the plaintiff").

Indeed, in a particularly well reasoned opinion subsequent to the matter at bar, Judge Delmas Hill categorically rejected the requirement of privity which was imposed herein, and read the "in connection with" requirement with appropriate liberality."

"We do not believe that Congress intended that the proscriptions of the Act would not be violated unless the makers of a misleading statement also participated in pertinent securities transactions in connection therewith, or unless it could be shown that the issuance of the statement was motivated by a plan to benefit the corporation or themselves at the expense of a duped investing public." SEC v. Texas Gulf Sulphur Company, 401 F.2d at 860. . . .

. . . . Perhaps the first step is to realize that the common law requirement of privity has all but vanished from 10b-5 proceedings while the distinguishable "connection" element is retained. . . . As appropriately stated by the Second Circuit, "a corporation's misleading material statement may injure an investor irrespective of whether the corporation itself, or those individuals managing it, are contemporaneously buying or selling the stock of the corporation." ⁶²

3. Indirect Conduct and Conspiracy.

The Court of Appeals rejected the trial court's findings of liability of the Bank and its officers based upon indirect dealings, including the aider and abettor and conspiracy concepts in particular,⁶³ summarily: "The record does not support the trial court's finding of a conspiracy, plan, or scheme. . . . The trial court was in error in so finding."⁶⁴ Conspiracy and aiding and abetting are concepts which are rarely subject to direct proof, yet here one of the co-conspirators, Nick Murray, actu-

⁶² Mitchell v. Texas Gulf Sulphur Co., F.2d (10th Cir., April 26, 1971)

⁶³ A. 521-22, 527, 536.

⁶⁴ A. 587.

ally testified of his arrangements to split profits with Gale on purchases for Elmo Matthews and others.⁶⁵

It is beyond question that Gale and Haslem, who were obligated under the Bank's contract to act in the interest of the Indian shareholders,⁶⁶ actually worked with non-Indians in the purchase of the stock.⁶⁷ When the corporation learned that sales were being made for old automobiles, in violation of the regulations, its lawyer notified the bank by letter that no sales should be completed "unless the full cash purchase price is left with the Bank."⁶⁸ and the UDC directors held meetings with the Bank officers on the subject.⁶⁹ Gale then frustrated their efforts by *misrepresenting* to the corporation that the Bank was requiring the full cash price in accordance with the terms of the offer.⁷⁰

There is no room for doubt that these used car dealers, if not acting in conspiracy with the Bank officers, were at least aided and abetted by them. On one occasion they appeared at a UDC directors meeting as a group, with a Bank officer, demanding that the transfer of shares be expedited in the interest of the non-Indian purchasers.⁷¹ Indeed, the manner in which the Bank assisted non-Indian purchasers, furnishing information⁷² and records⁷³ and the informality with which transfers were executed when requested by a used car dealer,⁷⁴ is consistent only with the trial judge's conclusion that the Bank was aiding and abetting these illegal purchases. The Court of

⁶⁵ A. 113-19.

⁶⁶ See plaintiff's exhibit 19, E. 16, A. 275.

⁶⁷ See plaintiff's exhibits 65B and 68C, E. 93 and 95, A. 64, 119, concerning arrangements involving Gale and plaintiff's exhibit 64J., E. 87, concerning arrangements involving Haslem.

⁶⁸ Plaintiff's exhibit 60B, E. 82, A. 336.

⁶⁹ See plaintiff's exhibit 58 E. 56 at 70, A. 330.

⁷⁰ *Id.* at E. 80. The trial judge's finding is at A. 516.

⁷¹ Plaintiff's exhibit 38 at E. 75-76, A. 330.

⁷² See plaintiff's exhibits 64D and 73, E. 85 and 98, A. 81.

⁷³ See Plaintiff's exhibit 70, E. 96. Compare the testimony of Orran Curry, who was refused information concerning his stock. A.150-51.

⁷⁴ See plaintiff's exhibit 49 A., E. 35.

Appeals also ignored that the price of the stock was actually set by the trust officers of the Bank,⁷⁵ who were simultaneously assisting, for a fee, in executing the illegal purchases by non-Indians.⁷⁶

As regards dealings such as these by the Bank and its officers, it has been appropriately said that "the hunter who seduces the prey and leads it to the trap he has set is no less guilty than the hunter whose hand springs the snare."⁷⁷

Brennan v. Midwestern United Life Insurance Co.,⁷⁸ is the principal authority applying the aider and abetter concept to private actions under Rule 10b-5, though other cases have reached analogous results, sometimes relying on the "directly or indirectly" language of the rule.⁷⁹ The Court of Appeals for the Seventh Circuit applied these concepts to brokers performing the same approximate functions of the Bank and its officers herein in *Buttrey v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*⁸⁰ and held that if the defendant "knew or should have known" of the fraudulent conduct of others and was in a relationship of trust or confidence with the plaintiff his mere in-

⁷⁵ See plaintiff's exhibit 58, E. 56 at 64, A. 330.

⁷⁶ See plaintiff's exhibit 66, E. 94, A. 450. Also see plaintiff's exhibits 60Q and 65A, E. 83 and 92. A 67 illustrating how the Bank officers circumvented the regulations by purchasing stock before the offering procedure was completed.

⁷⁷ *Lennerth v. Mendenhall* 234 F.Supp. 59, 65 (N.D. Ohio 1964). Liability based on such indirect dealings is peculiarly appropriate under the "directly or indirectly" language of the Rule. See also 18 U.S.C. §2(a) (1964) concerning aiding and abetting. See also *Sutro Bros. & Co.*, 41 S.E.C. 443, 458 (1963).

⁷⁸ 259 F. Supp. 673 (N.D. Ind. 1966) aff'd 417 F.2d 147 (7th Cir. 1969), cert. denied, 397 U.S. 989 (1970).

⁷⁹ *Globus v. Law Research Service, Inc.*, 287 F. Supp. 188 (S.D. N.Y. 1968); *Escott v. BarChris Construction Corp.*, 283 F. Supp. 643 (S.D. N.Y. 1968); *Fischer v. Kletz*, 266 F. Supp. 180 (S.D.N.Y. 1967).

⁸⁰ 410 F.2d 135, 144 (7th Cir. 1969), cert. denied, 396 U.S. 838 (1970).

action could create liability.⁸¹ The same concept has been applied to a Bank where it effectuated a fraud by its mere silence.⁸²

C. *The Rule Is Not Circumscribed by Banking Practices, Provisions of State Law or Contract Arrangements.*

The Court of Appeals Stressed the contract commitments between the Bank and UDC.⁸³ It was then concluded that, because the contract was a customary banking transaction, it could not be the basis of an action under the Rule.

The 'participation' by defendant Gale in the execution of documents as shown by the record in connection with these sales cannot constitute a breach of duty on his part to any of the plaintiffs. In this connection he did no more than to perform ministerial functions required to carry out the transfer of the shares of stock.⁸⁴

The Securities laws were thus emasculated, at least as regards banking transactions, for it is universally recognized that the Rule creates a duty which is additional to and in most cases more exacting than that of collateral business arrangements, or state laws dealing with banking⁸⁵ or other matters. No statutory

⁸¹ *Accord*, *Pettit v. American Stock Exchange*, 217 F. Supp. 21, 28 (S.D. N.Y. 1963). See also II L. LOSS, SECURITIES REGULATION 3892 (1969 Supp.).

⁸² *Carroll v. First National Bank*, 413 F.2d 353 (7th Cir. 1969); *cert. denied*, 396 U.S. 1003 (1970).

⁸³ See A. 581, 582. The Court of Appeals said that the contract did not require the Bank to discourage sales, but it did provide that "the corporation will instruct the Bank from time to time concerning the Bank's duties." Plaintiffs exhibit 18, E. 13, A. 275. The corporation did instruct the Bank "to discourage the sale of stock . . . and to emphasize and stress to the said stockholders the importance of retaining said stock." Plaintiff's exhibit 26, E. 19, A. 281. The Bank had also represented in negotiating the contract that it "would be acting for the individual stockholders." Plaintiff's exhibit 19, E. 16 at 17, A. 275.

⁸⁴ A. 584.

⁸⁵ *E.g. Kardon v. National Gypsum Co.*, 73 F. Supp. 798 (E. D. Penn. 1947). In *Tcherepnin v. Knight*, 389 U.S. 332 (1967) this Court took note of the legislative history of the Securities Act of 1933, adopted by

exemption for banking transactions was cited, and indeed there is none.⁸⁶

The Court of Appeals holding has the potential of creating havoc in the Exchange Act's system of regulations, for regular brokers dealing in securities over the counter, as Gale and Haslem did herein, are subject to careful regulations which were directed by Congress specifically to prevent circumvention of the regulatory provisions governing formal stock exchanges.⁸⁷ These regulations declare it to be a "manipulative, deceptive, or other fraudulent device or contrivance" to engage in many of the practices employed by Gale and Haslem, such as failing to advise whether the broker is acting as agent for the buyer, the name of the person who was the purchaser, and other pertinent information.⁸⁸ The Court of Appeals decision, which denies application of the same rules to an unregistered broker under section 10(b) as would apply to a registered broker under section 15(c)(1), creates an avenue for the avoidance of the anti-fraud provisions concerning over the counter trading by the simple expedient of conducting business through an employee of a banking institution.

the same legislative session which enacted the Exchange Act, where representatives of the savings and loan industry acknowledged that they *should* be subject to the anti-fraud provisions, but urged that they not be subject to other regulatory provisions. The Court of Appeals effectively turned that history about.

⁸⁶ This court has determined that basic banking transactions may be "securities" subject to Exchange Act regulations by definition. *Tcherepnin v. Knight*, 389 U.S. 332 (1967). See also *Carroll v. First National Bank*, 413 F.2d 353 (7th Cir. 1969), *cert. denied*, 396 U.S. 1003 (1970). See also decisions dealing with insurance contracts having a securities feature. *SEC v. National Securities, Inc.*, 393 U.S. 453 (1969); *SEC v. United Benefit Life Insurance Co.*, 387 U.S. 202 (1967); *SEC v. Variable Annuity Life Insurance Co.*, 359 U.S. 65 (1959).

⁸⁷ See H. R. Rep. No. 1383, 73rd Cong. 2d Sess. 16 (1934): "The benefits that would accrue as the result of raising the standards of security exchanges might be nullified if the over-the-counter markets were left unregulated and uncontrolled. They are of vast proportions and they would serve as a refuge for any business that might seek to escape the discipline of the exchanges."

⁸⁸ 15 U.S.C. § 78o (c) (1) (1964); 17 C.F.R. § 240.15c 1-4 (1971).

As this Court has indicated in a related context, the provisions of state law, including the state contract law which the Court of Appeals alluded to, give legal form to the transaction in question, but it is the federal statute which must be looked to in determining the obligation of the parties. In other words, the contract may determine if the Bank and its officers were fiduciaries and if they were that fact may relieve the plaintiffs of certain elements of proof which might otherwise be required under the anti-fraud provisions. This Court treated such collateral legal relationships in that fashion in its important *Capital Gains*⁸⁹ case, which remains the most definitive treatment of the elements of a fraud action under the securities laws:

Fraud, indeed, in the sense of a court of equity properly includes all acts, omissions and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another. *Nor is it necessary in a suit against a fiduciary . . . to establish all the elements required in a suit against a party to an arm's length transaction. Courts have imposed on a fiduciary an affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts' as well as an affirmative obligation 'to employ reasonable care to avoid misleading' his clients.* (Emphasis added).

The lower federal courts have recognized that the meaning of the "directly or indirectly" language of the Rule may be amplified by other federal statutes⁹⁰ and that arrangements ancillary to the securities transactions, including rules of securities dealers associations⁹¹ and stock exchange rules⁹² may expand the

⁸⁹ SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194 (1963).

⁹⁰ Brennan v. Midwestern United Life Insurance Co., 417 F.2d 147 (7th Cir. 1969); *cert denied*, 397 U.S. 989 (1970).

⁹¹ Colonial Realty Corp. v. Bache & Co., 358 F.2d 178 (2d Cir. 1966) *cert. denied* 385 U.S. 817 (1966).

⁹² Buttrey v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 410 F.2d 135 (7th Cir. 1969) *cert denied* 396 U.S. 838 (1970). Cf. Silver v. New York Stock Exchange, 373 U.S. 341, 355 (1963); Pettit v. American Stock Exchange, 217 F. Supp. 21 (S.D.N.Y. 1963).

duties imposed under the securities laws. Violation of such collateral regulations, or even private arrangements, could and should be considered as an "act, practice, or course of business which operates or would operate as a fraud or deceit" within the meaning of the Rule.⁹³

D. *The Court of Appeals Misapplied the Concepts of Reliance and Causation.*

The Court of Appeals held that reliance is "a basic element of a cause of this nature," as well as "proximate cause," which it said is "a simple and fundamental proposition" which the plaintiff must establish.⁹⁴ The trial judge's findings of reliance were, at the same time, rejected.⁹⁵ Thus, this Court must consider if reliance is as the Court of Appeals held, a fundamental element, and if it is, if reliance in the sense of direct, proximate, cause is necessary.

The appropriate limitation of liability under the Rule has been, and promises to continue to be, a constant battleground in the development of implied liabilities. In *J. I. Case Co. v. Borak*⁹⁶ this Court announced what continues to be the guiding and frequently repeated principle that the Exchange Act must be interpreted broadly, to give effect to its broad remedial purposes. In the same tenor, leading commentators have sug-

⁹³ Rules of stock exchanges and securities associations do have a semi-official flavor because they are sanctioned by other provisions of the Exchange Act and a distinction might be proposed on that basis. The agreement under which the Bank operated had the same quality of official status, however, since it bore the imprimatur of the Secretary pursuant to his assumed authority under the Termination Act.

⁹⁴ A. 586.

⁹⁵ The trial judge did not use the term "reliance" at any point in his findings, but he did rule as a matter of law that each and every element of the Rule was present. A. 536. Moreover, certain findings deal with fiduciary obligations and an "aura of responsibility" which actually go beyond mere reliance, A. 521, 533, and other findings, such as at A. 499-501, 516, 519-20, involve the elements of reliance as defined in non-disclosure cases. See *List v. Fashion Park, Inc.*, 340 F.2d 457 (2d Cir. 1964) cert. denied sub. nom. *List v. Lerner* 382 U.S. 811 (1965).

⁹⁶ 377 U.S. 426 (1964).

gested that no elements may, therefore, be added by the courts to those prescribed by the Rule itself. See III LOSS, SECURITIES REGULATION, 1764-65 (2d Ed. 1961):

Literally all that the rule seems to require is proof of (1) some fraud or material misstatement (which, by construction, may be satisfied by the defendant's silence when he has a duty to speak) in connection with the purchase or sale of a security and (2) [jurisdictional elements]. Indeed, the plaintiff is not limited to proving an untrue statement or an omission but has recourse to the possibly broader 'fraud' language of the first and third clause of the rule. The other elements of common law deceit — reliance, causation and scienter — are not mentioned.

It is submitted, therefore, that in circumscribing the limits of liability under the Rule, due consideration should be given to the well understood meaning of the terms employed rather than to search beyond the Rule for new elements such as the Court of Appeals has done herein. This Court has never squarely addressed itself to the problem, but the dictum of *SEC v. Capital Gains Research Bureau, Inc.*⁹⁷ constitutes tacit approval of professor Loss' rationale.

The difficulty with the concept of reliance, particularly in the sense of proximate cause, is that these are concepts which are rarely susceptible of direct proof and frequently not susceptible of proof at all in a case such as this one involving nondisclosure and manipulation of the securities markets. Security holders, and in particular those of limited experience such as these Indian plaintiffs, necessarily rely upon the integrity of the market place.⁹⁸

To put the matter in perspective, the trial judge held that the variegated misconduct of the Bank and its officers, much

⁹⁷ 375 U.S. 180 (1963).

⁹⁸ Congress so recognized in adopting the securities laws. See *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963).

of which might not be considered fraudulent if viewed in isolation, produced a mass psychology among the terminated Ute's which induced them to sell in large numbers. These circumstances, when considered by the trial judge in relation to the Indians' lack of sophistication and the limited fiduciary relationship the bank and its officers had towards the Indians, indicated liability in all of the sales transactions, including the non-principal sales. The Court of Appeals rejected that view in favor of individual reliance and strict proximate causation (which may be difficult to prove even in the direct sales transactions) and said that the Indians lack of sophistication was not a circumstance which could be considered. Even a cursory look at the legislative history of the Exchange Act, which the Court of Appeals made no reference to at all, would have demonstrated that Congress shared the view of the trial judge.⁹⁹

The Courts should neither be permitted nor required to balance the fault, as the Court of Appeals did when it criticized the Indians for "executing" false affidavits¹⁰⁰ examine intervening causation, or to "separate the mental urges,"¹⁰¹ which would be necessary under the standards of reliance and proximate cause.

⁹⁹ See H. R. Rep. No. 1383, 73rd Cong. 2d Sess. 6, 11 (1934):

Speculation, manipulation, faulty credit control, *investors' ignorance, and disregard of trust relationships by those whom the law should regard as fiduciaries*, are all a single seamless web.

The deliberate introduction of a mob psychology into the speculative markets by the fanfare of organized manipulation menace the true functioning of the exchanges, upon which the economic well being of the whole country depends. (Emphasis added.)

¹⁰⁰ A. 583.

¹⁰¹ "Neither the Commission nor the courts should be required 'to separate the mental urges,' *Peterson v. Greenville*, 373 U.S. 244, 248, 262 of an investment advisor for '[t]he motives of man are too complex to separate . . . ' *Mosser v. Darrow*, 341 U.S. 267, 271." *SEC v. Capital Gains Research Bureau, Inc.*, 373 U.S. 180, 200-01 (1963).

Despite the logic of Professor Loss' reasoning, the majority¹⁰² of courts have sallied beyond the precise language of the Rule, somewhat inconsistently, applying "the full panoply of common law fraud elements — misrepresentation or nondisclosure, materiality, scienter, intent to defraud, reliance and causation".¹⁰³ Yet if classic reliance is required, in the sense of "proximate cause," as the Court of Appeals held in this case, significantly different elements are thereby added to the rule, and the mere use of such terminology produces confusion. Some portions of the Rule, notably those employing fraud terminology, *could* be conditioned on a showing of reliance. Other por-

¹⁰² A respected minority of courts have given effect to Professor Loss' rationale. See *Miller v. Bargain City, U.S.A., Inc.*, 229 F. Supp. 33, 37 (E.D. Pa. 1964): "In my judgment, it would be an unwarranted restriction of the broad protection contemplated by the federal scheme of securities legislation to engraft upon that scheme a requirement that is neither a part of the statute nor a part of the governing common law tort principles." To the same effect, see *Stevens v. Vowell*, 343 F.2d 374 (10th Cir. 1965); *Ellis v. Carter*, 291 F.2d 270 (9th Cir. 1961); *Matheson v. Armburst*, 284 F.2d 670 (9th Cir. 1960) *cert. denied*, 365 U.S. 870 (1961); *Errion v. Connell*, 236 F.2d 447, 455 (9th Cir. 1956); *Globus v. Law Research Service, Inc.*, 287 F.Supp. 188 (S.D.N.Y. 1968); *Barlas v. Bear, Stearns & Co.*, CCH Fed. Sec. L. Rep. ¶ 91, 674 (N.D. Ill. 1966).

¹⁰³ *Mitchell v. Texas Gulf Sulphur Co.*, F.2d (10th Cir. April 26, 1971). Because of the obvious difficulty in applying the reliance concept in its literal sense to fraud practiced in the market place, in particular, the courts have been forced to contortions of reasoning which do not lend the desired predictability in the legal standard. For example, the leading "reliance" authority is *List v. Fashion Park, Inc.*, 340 F.2d 457 (2d Cir. 1965), *cert denied sub. nom.* *List v. Lerner*, 382 U.S. 811 (1965). Yet, the Fashion Park case defined reliance in terms of whether "the misrepresentation is a substantial factor in determining the course of conduct" of the plaintiff or, in a case of non-disclosure, "whether the plaintiff would have been influenced to act differently than he did act if the defendant had disclosed to him the undisclosed fact." The test of "materiality," on the other hand, which is an *express* element under the rule, is whether "in reasonable and objective contemplation [the fact] might affect the value of the corporations stock or securities." *Chasins v. Smith, Barney & Co., Inc.*, F.2d (2d Cir. 1971) quoting from *SEC v. Texas Gulf Sulphur Co.*, 401 F.2d 833, 849 (2d Cir. 1968), *cert denied sub nom.* *Coates v. SEC*, 394 U.S. 976 (1969). See also *Ecott v. BarChris Construction Corp.*, 283 F. Supp. 643, 681 (S.D.N.Y. 1968). See footnote 109, *infra*.

tions of the Rule, particularly those dealing with half-truths or nondisclosure, seem ill-suited to such a showing at all. The task confronting this Court is to determine if reliance *should* be required in *any* private actions under the Rule. That question should be resolved in light of the fundamental objectives of the Rule, which were not examined by the Court of Appeals.

Had Congress intended that a showing of reliance be required in a cause of action under section 10(b) of the Exchange Act, it knew how to express that intent, and did so in other provisions of the securities laws.¹⁰⁴ The legislative history of the Exchange Act indicates that it was intended that any person who is in fact affected by manipulative or fraudulent practices should be allowed to recover his damages, but no mention is made of a "reliance" or "proximate cause" standard in this connection.¹⁰⁵ It seems clear, therefore that if Congress had causation in mind at all it intended nothing more than "but for"

¹⁰⁴ Section 18 of the Exchange Act, 15 U.S.C. §78r (1964), contains a statutory requirement of a showing of reliance, as does section 11(a) of the Securities Act of 1933, 15 U.S.C. §77k (a) (1964). Rule 10b-5 was, of course, promulgated by the United States Securities and Exchange Commission, but section 10 of the Exchange Act, which is the enabling provision, contains the basic fraud language without reference to "reliance." Moreover, the Rule has a counterpart in section 17(a) of the Securities Act of 1933, 15 U.S.C. §77q (a) (1964), containing substantially identical language which may fairly be said to express the intent of Congress on the elements of the Rule proper. Section 17(a) also contains no reference to "reliance."

¹⁰⁵ See H. R. Rep. No. 1383, 73rd Cong. 2d Sess. 11 (1934) "To make effective the prohibitions against manipulation civil redress is given to those able to prove actual damages from any of the prohibited practices." See also Minority report, H. R. Rep. No. 1383, 73rd Cong. 2d Sess. 31 (1934), where an objection was voiced because a suit for damages for misrepresentation is available to "anyone who suffers." Compare the comments dealing with actions under section 9 of the Exchange Act, 15 U.S.C. §78i (1964), where it was indicated that "in such case the burden is on the plaintiff to show the violation or the fact that the statement was false or misleading, and that he relied thereon to his damage." Sen. Rep. No. 792, 73rd Cong. 2d Sess. 13 (1934). Such a requirement is consistent with the language of section 9, which refers to "inducing the purchase or sale" throughout. No comparable language was inserted in section 10.

causation, which would be consistent with its intent to ban *all* false, deceptive or manipulative practices in connection with *any* securities transaction. Moreover the integrity of the market place, which the Exchange Act was fundamentally concerned with, is not promoted by allowing one whose fraud has already been established to set up an additional defense on the theory that the plaintiff *may* have been imprudent or otherwise suffered his loss even if the defendant had not committed fraud.

Analogy to the law developed in cases involving intersection collisions, where the concepts invoked by the Court of Appeals have come into full flower and where balancing of fault does serve public policy, seems inappropriate when dealing with Congressional enactments designed to eliminate *all* deceptive practices from the securities markets. It may be true, as the Court of Appeals evidently concluded, that the Indians' loss was in large measure a result of their own improvidence, but lack of sophistication or improvidence are not conditions declared to be against public policy under the Rule—the deceptive practices of the defendants are.

In deceit cases most similar to the matter at bar, in which the privity of contract required by the Court of Appeals was not present, liability was imposed *if the plaintiff was among the class of persons to whom the misstatement was directed*.¹⁰⁶ In *Peek v. Gurney*¹⁰⁷ that standard, which is a qualified version

¹⁰⁶ *Pasley v. Freeman*, 100 Eng. Rep. 450 (K.B. 1789). Importing the common law practice of circumscribing liability in terms of those to whom the misrepresentation was intended for, has logic to commend it—at least in cases based upon misrepresentation rather than omission—in view of the use of the term *deceit* in the rule. That concept was, after all, a part of the law of deceit which the rule seems to adopt. But, it has been urged that even that limitation is unduly restrictive and that all persons who could reasonably be expected by the defendant to rely upon the misrepresentation should be allowed to recover. See Comment, 4 STAN. L. REV. 308 (1952).

¹⁰⁷ 43 L. J. (n.s.) 19 (1873). Liability was not imposed in *Peek v. Gurney* because the purchaser in a secondary market transaction was not

of the "but for" causation petitioners urge to the Court, was applied to stock transactions in the anonymous setting of the market place. Haslem, Gale and the Bank, whose conduct was obviously intended to influence the entire group of Indian shareholders, should be held to at least as high a standard of liability as was imposed at common law.

These considerations have caused as able a judge as the late Jerome N. Frank to conclude that it is improper for the courts to impose restrictions under the Rule which neither Congress nor the Commission have considered "necessary or appropriate."¹⁰⁸ SEC has reached the same conclusion in *amicus*

within the class of persons that the misstatements, contained in an offering circular, were directed to. Lord Chelmsford indicated, however, that *Scott v. Dickenson*, 29 Law J. Rep. (n.s.) Ex. 62, in which a false prospectus was left at a bank for the consumption of the general public was an appropriate case for liability of the directors to members of the public who were injured, despite the absence of privity. For an excellent contemporaneous analysis of *Peck v. Gurney*, see Thompson, *Liability of Directors for Deceit*, 22 CEN9 L. J. 81, 90-92 (1886).

¹⁰⁸ See the dissent of Frank J., in *Joseph v. Farnsworth Radio and Television Corp.*, 198 F.2d 883, 884 (2d Cir. 1952).

¹⁰⁹ See Memorandum For SEC, *Amicus Curiae*, On Petition For A Writ of Certiorari in *List v. Lerner*, Docket No. 66 (October Term, 1965) at pages 7-8:

"Framing the test in terms of 'reliance,' however, is not particularly helpful when dealing with a case of complete non-disclosure. For it is difficult to see how a seller fairly can be said to have 'relied' upon something he never even knew about, and this analysis leads to such confusing concepts . . . as 'the negative of the fact undisclosed.' The appropriate inquiry, we believe, is whether the non-disclosure by the buyer caused injury to the seller.

"The court of appeals enunciated the test as 'whether the plaintiff would have been influenced to act differently than he did act if the defendant had disclosed to him the undisclosed fact' . . . In a case where the transaction was personally negotiated between the parties, this may be an appropriate basis for determining whether the seller was injured by the non-disclosure. But it would seem too restrictive a standard in situations where the element of personal negotiation was lacking and the purchases were routing transactions on a securities exchange or in over-the-counter market. If, for example, an insider, upon receiving information which, if made public, foreseeably would cause the market place price of his company's stock to double, buys such

briefs filed with this Court, in which it has rejected reliance as a proper test and said that "the appropriate inquiry . . . is whether the non-disclosure by the buyer *caused* injury to the seller."¹⁰⁹ Since this case is first impression in this Court on the elements of an action under Rule 10b-5, we urge that the well reasoned analyses of Judge Frank, SEC, and Professor Loss, though perhaps a minority at least with reference to the particular element of reliance, should be carefully considered. It should also be considered if the responsible and obviously calculated dictum of *Capital Gains*, where this Court stressed that in private damage actions it is only necessary to show that the defendant "*intended* that action be taken in reliance,"¹¹⁰ and more recently in *Mills v. Electric Auto-Lite*,¹¹¹ where it was suggested that the elements of causation and reliance are not appropriate to an action under section 14(a) of the Exchange Act, do not represent the adoption of the "but for" rationale.

II

THE UNITED STATES WAS NEGLIGENT IN IMPLEMENTING THE TERMINATION ACT.

A. *Statement.*

The obligation of the United States in implementing the Termination Act is an important question to all Indians every-

stock before the information is disclosed, those who sell to him at the lower price are damaged, even though they still might have sold had the information been public. See, e.g., *Cady, Roberts & Co.*, 40 S.E.C. 907. For in that case they would have received twice as much. In any realistic sense, therefore, they were injured by the buyer's non-disclosure, and should be permitted to recover."

¹⁰⁹ 375 U.S. 180, 192n. 39. See footnote 59 and related text.

¹¹¹ 396 U.S. 375, 382n. 5 (1970). "Where there has been a finding of materiality, a shareholder has made a sufficient showing of causal relationship between the violation and the injury for which he seeks redress, if, as here, he proves that the proxy solicitation itself, rather than the particular defect in the solicitation materials, was an essential link in the accomplishment of the transaction." *Id.* at 385.

where. If Congress directs that minerals and judgment claims shall be held subject to the restriction and supervision of the United States, and that they not be partitioned to corporations, may BIA circumvent those provisions by delivering the proceeds from the mineral estate to a corporation? When Congress directs that management rights (as distinguished from beneficial title) be held in common and exercised under a "constitution and bylaws" adopted by a majority of the adult Indians in a special election called by the Secretary, may BIA substitute a corporate charter adopted by five Indians and "accepted" by an insignificant minority? If Congress directs that action taken by the general membership of the Indians will no longer be binding upon the terminated Utes after "such approved organization is effected," may BIA bypass the approved organization when it suits its convenience and dispose of valuable property rights in public meetings?

When Congress directs protective provisions for the "members of the tribe," may BIA officials deny the protections to the individual member and shift it to a corporate entity—the Tribe?

B. *Both The Termination Act and 25 U.S.C. §345 Must Be Construed In a Manner Affording Maximum Protection to the Indian.*

Since the time of Chief Justice Marshall, this Court has been unyielding in its insistence that Indian laws be construed in the manner most favorable to the Indian,¹¹² as a protection for his property. *E.g. Choate v. Trapp*.¹¹³

The construction, instead of being strict, is liberal; doubtful expressions, instead of being resolved in favor of the United States are to be resolved in favor of a

¹¹² See F. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 172 (1971). Accord, *Poafpybitty v. Skelly Oil Co.*, 390 U.S. 365, 369 (1968); *United States v. Hellard*, 322 U.S. 363 (1944); *Alaska Pacific Fisheries v. United States*, 248 U.S. 78 (1918).

¹¹³ 224 U.S. 665, 675 (1912).

weak and defenseless people . . . In view of the universality of this rule [legislation] should be liberally construed in their favor

With particular reference to restricted property such as the mineral estate, until the restriction against alienation is removed *in the manner provided by law*, the presumptions of Indian law continue even though the wardship relation of the person may have been dissolved,¹¹⁴ as it was in this case on publication of the "termination proclamation."

1. As regards Termination Legislation.

The policy of liberal construction has been applied by this Court to companion termination laws.¹¹⁵ By adopting a strict construction *against* the interest of the terminated Utes, and indulging in the presumption that BIA by its mere acquiescence could effect a transfer of the powers of authorized representative from AUC to UDC, the Court of Appeals reversed this historic policy. Whatever their merits in other contexts, such presumptions have never been countenanced as a device to divest Indian rights,¹¹⁶ and it has been consistently held that BIA may not administratively alter the policies of Congress.¹¹⁷

¹¹⁴ F. COHEN, *supra* note 112, quoting from *United States v. Nez Perce County*, 267 Fed. 495, 497-98 (D. Idaho 1917).

¹¹⁵ *Menominee Tribe v. United States*, 391 U.S. 404 (1968).

¹¹⁶ *E.g. Ballinger v. Frost*, 216 U.S. 240, 249 (1910):

Whenever, in pursuance of the legislation of Congress, rights [of an Indian] have become vested it becomes the duty of the courts to see that those rights are not disturbed by any action of an executive officer, even the Secretary of Interior, the head of a department. However laudable may be the motives of the Secretary, he, as all others, is bound by the provisions of Congressional legislation.

¹¹⁷ *United States v. Arenas*, 158 F.2d 730, 747-48 (9th Cir. 1947) *cert. denied* 331 U.S. 842 (1947): "In his dealings with the Indians, the Secretary of Interior does not have the power of an Asiatic potentate or even of a benevolent despot. He like his wards themselves, is subject to legislative restrictions." See also *United States v. Hellard*, 322 U.S. 363, 368 (1944); *Mullen v. Simmons*, 234 U.S. 192 (1914); *Starr v. Long Jim*, 227 U.S. 613 (1913).

The Court of Appeals' reading of the language of the Termination Act declaring that after termination of the person "the laws of the several states shall apply to such member in the same manner as they apply to other citizens,"¹¹⁸ as meaning that the public could deal with the Indians' restricted property at arms length also represents a reversal of the traditional policy. This Court has consistently said that if a purchase of restricted property is made in violation of the procedures prescribed by Congress the sale may be set aside and the Indian need not make restitution.¹¹⁹ "This result may be harsh to the [defendants] but as Justice Holmes once said, people must turn square corners when they deal with their government. They must do the same when dealing with their government's wards."¹²⁰

The trial judge disregarded these firmly established policies and required that the "fair value" of the consideration received by such plaintiff¹²¹ be deducted from the damages awarded. Since there was no evidence of the value of the miscellaneous chattels given to the Indian, the amount recited in the fictitious affidavits was taken as the fair value. This holding represents a substantial injustice, which strikes at fundamental Indian policy, and should be reversed.¹²²

2. As Regards Jurisdiction.

If the terminated Utes "[have] an undivided 27 per cent beneficial interest in the oil, gas and minerals" as the Court

¹¹⁸ Section 23, 25 U.S.C. §677v (1964), App. xvi.

¹¹⁹ Heckman v. United States, 224 U.S. 413, 446-47 (1912). "The effectiveness of the acts of Congress concerning the Indian's thriftlessness is not thus to be destroyed. The restrictions were set forth in public laws, and were matters of general knowledge. Those who dealt with the Indians contrary to these provisions are not entitled to insist that . . . the purchase price [be] repaid, and thus frustrate the policy of the statute." See also United States v. Trinidad Coal and Coking Co., 137 U.S. 160 (1890).

¹²⁰ Bacher v. Patencio, 232 F. Supp. 939, 941 (S.D. Cal. 1964) *aff'd per curiam*, 368 F.2d 1010 (9th Cir. 1966).

¹²¹ A. 537.

¹²² This Court read identical provisions in companion legislation as meaning only that federal statutes no longer apply. Menominee Tribe v. United States, 391 U.S. 404 (1968).

of Appeals acknowledged,¹²³ this Court must confront the question of whether the federal courts have jurisdiction to grant the requested relief.¹²⁴ The Court of Appeals held that they do not.¹²⁵

AUC relied primarily on the language of 25 U.S.C. §345:

All persons¹²⁶ who are in whole or in part of Indian blood or descent . . . who claim to have been unlawfully denied or excluded from . . . any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States . . .

The policy of liberal construction of Indian laws applies to jurisdictional questions,¹²⁷ but the Court of Appeals gave the statute a narrow reading and held that it was confined to jurisdiction over "allotments" of the conventional variety. The holding, in logic, must be in error for if the Termination Act vested the Indians with equitable title, they are "lawfully entitled by virtue of any Act of Congress," at least with respect to beneficial title.

The Court of Appeals also held that the Termination Act's grant of individual interests in the minerals, whether characterized as legal title or a mere beneficial interest, could not be considered an "allotment" for the purpose of 25 U.S.C. § 345. Congress evidently considered the terminated Ute's interests to be

¹²³ A. 588.

¹²⁴ A. 539. The Court of Appeals attempted to emasculate the AUC complaint with its declaration that "It is not an issue in this case as to what organization on behalf of the mixed-blood group has the right of management, and we do not so decide." A. 588.

¹²⁵ A. 588.

¹²⁶ AUC filed suit on behalf of all of its Indian members pursuant to the right conferred by statute to act "for their common welfare." Section 6, 25 U.S.C. §677e (1964), App. iii.

¹²⁷ *McKay v. Kalyton*, 204 U.S. 458, 469 (1907). Cf. *United States v. Hellard*, 322 U.S. 363 (1944).

very much like an allotment, however, and even called them "allotments" at one point.¹²⁸ Moreover, this Court has rejected the argument that a grant of mere beneficial rights cannot be determined under 25 U.S.C. §345:

The suggestion . . . that the controversy here presented involved the mere possession and not the title to the allotted land is without merit, since the right of possession asserted of necessity is dependent upon the existence of an equitable title in the claimant under the legislation of Congress to the ownership of the allotted lands.¹²⁹

The same reasoning should apply to the portions of the statute dealing with a claim to entitlement under an Act of Congress.

The courts have given 25 U.S.C. §345 a similarly liberal reading in other context. Thus, in *Gerard v. United States*,¹³⁰ effect was given to *both* types of actions contemplated by the statute, viz: "provisions (a) where an Indian is seeking to establish his 'right . . . to any allotment' and provisions (b), where he is seeking to protect his interest in 'land' to which he is entitled 'under any grant made by Congress.'" Very recently, in *Scholder v. United States*,¹³¹ it was held that the section could

¹²⁸ See section 13, 25 U.S.C. §677l (2) (1964) at App. x: "The value of improvements made . . . shall be excluded from the valuation in making allotments . . ." The term "allotment" has also been read liberally by this Court. In *United States v. Jackson*, 280 U.S. 183, 196 (1930) it was held that the Indian Homestead Act of June 4, 1884, must be considered *in pari materia* with the General Allotment Act of February 8, 1887, along with any other statutes "evidencing a continuous purpose on the part of Congress" to eliminate the wardship relation between the Indian and the United States and the substitution of personal property ownership. The termination acts are the last in a line of statutes dealing with this common purpose. Cf. *Menominee Tribe v. United States*, 391 U.S. 404 (1968); *Toss Weaxta*, 47 L.D. 574 (1920).

¹²⁹ *McKay v. Kalyton*, 204 U.S. 458, 469 (1907).

¹³⁰ 167 F.2d 951 (9th Cir. 1948). See also *Hy-Yu-Tse-Mil-Kin v. Smith*, 194 U.S. 401 (1904), where the Section was used to obtain a declaration of an Indians status under an Act of Congress, where no allotment was yet selected; *Halbert v. United States*, 283 U.S. 753 (1931); *Arenas v. United States*, 322 U.S. 419 (1944).

¹³¹ 428 F.2d 1123 (9th Cir. 1970), *cert. denied*, 400 U.S. 942 (1970).

be used to challenge construction charges for irrigation projects under contracts merely collateral to an Indian allotment.

The proper limits of the jurisdictional statute, therefore, are not along the formalistic lines of whether a particular grant is denominated an "allotment," but are as explained in *United States v. Pierce*.¹³² That is, the statute may not be used to substitute the courts' judgment for that of Congress in questions of Indian land policy. But Congress *has* declared the policy under the Termination Act, and the statute refers to a "claim" to which an Indian is "lawfully entitled by virtue of *any* Act of Congress."

C. *AUC is the Only Proper "Authorized Representative."*

The initial formation of AUC as authorized representative is recited in the statement of the case and is not in dispute. The question, rather, is whether AUC's rights were properly shifted to UDC. The Court of Appeals asserted that "the termination statute . . . permitted the mixed-blood group to form associations *or corporations* to handle some of the property difficult or impossible to distribute" and that UDC was thus formed to "handle" the minerals and to act as "authorized representative."¹³³ The Termination Act did not, by its terms, permit the terminated Utes to form associations *or corporations* to handle the minerals and act as authorized representative — it provided for an unincorporated association *only*.

In an apparent effort to justify BIA's action in substituting UDC as authorized representative, it was observed that "the Secretary of Interior *acquiesced* in the formation of the corporation," which must be measured against the policy of liberal construction of Indian laws. No statutory authority for such acquiescence was cited, and indeed there is none. To the con-

¹³² 235 F.2d 885 888 (9th Cir. 1956). See also *Segundo v. United States*, 123 F. Supp. 554 (S.D. Cal. 1954). Cf. *Pinto v. Tampo Largo*, 205 F. Supp. 129 (S.D. Cal., 1962).

¹³³ A. 576, 578, 588.

trary, the Termination Act implied, at least, that such a corporation could not be formed in at least three places:

1. Section 13(2)¹³⁴ provides for the "partition of the lands of the mixed-blood group, *excepting all gas, oil and mineral rights*, to corporations . . ."

2. Section 6,¹³⁵ provides that the authorized representative is to be designated by a "constitution and bylaws."

3. Section 13(3)¹³⁶ provides that corporations may be organized for the grazing of livestock and the handling of water and water rights. Handling of mineral rights or acting as "authorized representative" are not mentioned.

The defects in the organization of UDC, moreover, are fundamental. Congress plainly declared in section 6 that the following procedures must be followed in the formation of the authorized representative.

(a) The authorized representative must be formed pursuant to a constitution and bylaws.

(b) A majority of adult terminated Utes must approve the constitution and bylaws.

(c) The approval by the terminated Utes must be "at a special election authorized and called by the Secretary."

UDC did not conform with *any* of these prerequisites.

More basic still, on November 1, 1958, when a small group of Indians purported to "accept" the UDC articles,¹³⁷ there was no statutory authority to take any action respecting the

¹³⁴ 25 U.S.C. §677l (2) (1964), App. x.

¹³⁵ 25 U.S.C. §677e (1964), App. iii. The pertinent language of the section reads: "The mixed-blood members of the tribe . . . may adopt an appropriate constitution and bylaws . . . Such constitution may provide for the selection of authorized representatives. . . ."

¹³⁶ 25 U.S.C. §677l (3) (1964), App. xi.

¹³⁷ See footnote 9, *supra*.

authorized representative in a general membership meeting. That conclusion also follows from the language of section 6, which declares that "in the event no such approved organization is effected" the terminated Utes could act in a general membership meeting. Plainly, an approved organization *had* been effected upon the formation of AUC in 1956, thus superseding the provisions of section 6 concerning action at a general membership meeting.

These technical matters of construction should not be resolved in a vacuum, but should be considered in light of the purpose of the Termination Act. The construction proposed suits the Congressional purpose in several ways.

First, the basic policy of the Act was to substitute individual rights for community or tribal rights.¹³⁸ Once the "approved organization" was effected all rights, whether legal or beneficial, vested subject only to supervision by the Secretary during the ten year transitional period. Thereafter, the individual Indian was no more subject to having his property disposed of jointly, by majority vote in a public meeting, than would any other citizen at a public gathering of his neighbors.

Second, Congress recognized that the terminated Utes' business experience was limited in several different provisions,¹³⁹ including the provision for a constitution and bylaws to deal with the minerals. Congress presumably understood the restrictions on alienability under a constitution and bylaws, as opposed to a corporate charter, and intended it as a protection for this property.¹⁴⁰

Third, the authorized representative was to manage the beneficial interests of all Terminated Utes and to sit with the

¹³⁸ See section 10, 25 U.S.C. §677i (1964), App. vi. Cf. section 8, 25 U.S.C. §677g (1964) at App. v.

¹³⁹ See section 22, 25 U.S.C. §677u (1964), App. xvi. That recognition is also implicit in the phased withdrawal of supervision.

¹⁴⁰ Contrast the provisions for a corporation to handle tangible rights, such as grazing and water, which the Indian would have less difficulty in dealing with. See section 13(3), 25 U.S.C. §677l (3) (1964), App. xi.

tribal business committee as joint managers of an oil-rich region. If membership in the organization exercising these rights could be sold, shrewd whites, in the pattern of the past, might gain control or even dominate the Indians from a position of minority control. Worse, perhaps, is the prospect of non-Indians intruding into tribal affairs. The provision for a constitution and bylaws rather than a corporation seems designed to protect against these possibilities.

Fourth, the authorized representative was also invested with powers of management of "all unadjudicated or unliquidated claims against the United States." These claims are the product of special jurisdictional acts and special Indian Claims Commission jurisdiction. Surely Congress did not intend that whites could *purchase* an interest in beneficent acts designed to compensate for social injustices of the past.¹⁴¹

The action of BIA in substituting UDC for the institutions and policies prescribed by Congress may have been in complete good faith. It was, nevertheless, in disregard of Congress' directive, and a substantial act of negligence.¹⁴² If the deviations from the requirements of the Termination Act are sanctioned the way will be opened to high handed administrators who would deal in an autocratic fashion with property of their Indian wards.¹⁴³

¹⁴¹ Some purchasers considered that they were doing exactly that. See exhibit 64D, E. 85, A. 450.

¹⁴² The trial judge so recognized, with his conclusions that the Secretary had a duty "to see that the statute governing transfers was observed in substance as well as in form," A. 532 that "it rested with Congress to determine when the guardianship relationship between the government and the mixed-blood ceased and when and how termination should be effected;" A. 533 and that to the extent that the government undertook to perform functions not directed by the Termination Act it "had the duty to exercise reasonable care in connection therewith." A. 533.

¹⁴³ See generally, V. DELORIA, JR., CUSTER DIED FOR YOUR SINS, (1969).

D. The Neglect of BIA in Requiring Compliance With the Regulations.

Rightly or wrongly, UDC was formed. The Secretary did promulgate regulations concerning the sale of its stock. The principal findings of the trial judge concerning the negligence of the United States centered on BIA's failure to require compliance with the regulations thus adopted.

1. Failure to Require Compliance with the Sales Procedure.

A general description of the sales procedure is contained in the statement of the case. Specifically, the restrictions imposed were those Congress prescribed in 25 U.S.C. §677n in the case of a sale of real property, which the Secretary incorporated in the regulations and the articles of incorporation of UDC¹⁴⁴ and its stock certificates.¹⁴⁵ The requirements were:

(1) The filing, by the Indian, of an "offer to sell" the UDC shares to the "members of the tribe," specifying a sum in cash, on forms prepared by the BIA.¹⁴⁶

(2) Posting by the Superintendent of the offer to sell at various public places in the vicinity of the reservation.¹⁴⁷

(3) Advise to the Indian, by means of a "notification"¹⁴⁸ prepared by the Superintendent, that no offer had been received, and that the shares could be sold at the same or a greater price, and on the same terms and conditions, within a six months period of time.

(4) Endorsement by the Indian of the certificate itself.¹⁴⁹

¹⁴⁴ Exhibit 16A, E. 1 at 6.

¹⁴⁵ Exhibit 101, E. 107, A. 28.

¹⁴⁶ Exhibit 50, E. 41, and the BIA's "Instructions" accompanying the form at E. 44-45, A. 207.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at E. 37.

¹⁴⁹ The certificate, Ex. 101 at E. 106, A. 28, provided on its face that the stock was "transferable only . . . upon surrender of this Certificate properly endorsed." See also 25 C.F.R. § 243.12 (1962) (deleted 1969), App. xx, incorporating all restrictions printed on the stock certificate.

(5) Determination by the Superintendent that the sale was on the "same terms and conditions" as the offer filed with the Superintendent.¹⁵⁰

(6) Certification of the Superintendent *to be furnished to the purchaser*,¹⁵¹ and endorsed *on the stock certificate itself* "that a prior and proper offer has been made . . . in accordance with law and regulations."¹⁵²

No transfer of UDC stock in the entire history of the Termination Act was accomplished in the specified manner. Never did the Superintendent require that a single sale be on the "same terms and conditions" — *i.e., cash*, 10% deposited on acceptance of the offer and the balance paid to the superintendent within 30 days by certified check, bank draft or postal money order.¹⁵³ The Superintendent never required endorsement of the certificate, but accepted a separate stock power — a practice inaugurated to suit the convenience of the Bank, rather than protect the Indian. The Superintendent's certificate was never furnished to the purchaser, but in all cases was furnished to the Bank.

Whether these deviations were in good faith or in disregard of the Indians' rights is unimportant. In either event, they proximately caused the Indian's loss because if the Superin-

¹⁵⁰ See UDC Articles, Article VIII at E. 6, 25 C.F.R. § 243.8 (1962) (deleted 1969) App. xx and the forms promulgated by the BIA, E. 37 41, 44 and 46, A. 207.

¹⁵¹ See 25 C.F.R. § 243.8 (1962) (deleted 1969), App. xvii.

¹⁵² See the legend on the reverse of the stock certificate at E. 107. Article VIII of the UDC articles at E. 6, and 25 C.F.R. § 243.12 (1962) (deleted 1969) at App. xx. See also the Banks letter in connection with the first attempted transfer, in which this limitation was recognized, Exhibit 44, E. 28, A. 285.

¹⁵³ These are the terms of the offer. See Exhibit 50, E. 41, A. 207. The Superintendent never received the payments for any Indian. See UDC minutes for September 10, 1963, E. 58, 59, A. 330. The acting Superintendent and the Realty Officer were both in attendance. In paragraphs nos. 4 and 7 the sales procedure was discussed and they were advised that the Indians were getting used cars rather than the cash stipulated.

tendent had required strict compliance with the procedures the fraud of others would have been most unlikely, and perhaps impossible. The stock certificates had warnings spread all over them designed to protect the Indian, but not a single Indian ever saw the warnings before August 27, 1964 because the certificates were withheld by the Bank. If the Superintendent had required compliance with the regulations, every Indian would have been required to see the warnings. The group hysteria which pervaded the reservation in 1963-64, which caused most Indians to sell, may very well have been prevented, but even if it was not the Indians would have at least been assured that they received their money. The requirement that the certificate be furnished to the purchaser may seem unimportant on the surface, but if it had been enforced the Superintendent would have been in personal contact with each and every purchaser. His task of verifying the regularity of transactions, in that event, would have been more effective. More importantly perhaps, the enforcement of that condition would have rendered the brokerage activities of Gale and Haslem most unlikely.

2. Failure to Preserve the Terminated Utes Rights as "Members of the Tribe."

The Termination Act created a "right of refusal" in the "members of the tribe"¹⁵⁴ as to all sales of real property prior to August 27, 1964, and the Secretary's regulations extended that right to the stock sales. The Court of Appeals nullified these protections, however, by holding that when Congress and the Secretary said "members of the tribe" they meant to say "Tribe," and further, meant to exclude the "members" from the exercise of that privilege.

The implications are profound and their importance should not be ignored. It may be true, as the Association on American

¹⁵⁴ See section 15 of the Termination Act, 25 U.S.C. §677n. (1964). App. xii, 25 C.F.R. §243.2 (c) (1962) (deleted 1969), App. xviii.

Indian Affairs, Inc., *amicus curiae*, has said, that the retention of the minerals by the United States is reason enough to find a duty, but that does not diminish the importance of this question. The problem here is over *express rights contained in the statute*. If BIA, or the Courts, can divest the individual Indian of protections devised by Congress, Indian rights throughout the Nation will be unsettled.¹⁵⁵

The Court of Appeals never disputed that the sales procedure was aborted by pure inaction of the Superintendent, but vindicated the United States by holding that the terminated Utes "had no rights under the right of refusal" ergo, no duty and no liability. The anachronistic position was thus adopted that, under legislation whose dominant objective was the adjustment of the condition of the terminated Utes, the terminated Utes themselves had utterly no rights.

In reaching that conclusion, the Court of Appeals relied entirely on its own recently issued opinion in *Ute Indian Tribe v. Probst*,¹⁵⁶ which was unfortunately rendered on a record virtually devoid of evidence concerning the meaning of "members of the tribe." The Court in *Probst* even noted that "we are aware of no legislative history which illuminates the intent

¹⁵⁵ See *Menominee Tribe v. United States*, 388 F.2d 998 (Ct. Cl. 1967), *aff'd*, 391 U.S. 404 (1968); *Crain v. First National Bank*, 324 F.2d 532 (9th Cir. 1963) (Indian status survives termination of the person). Possibly the best example of the purpose of the Termination Act to protect the individual terminated Ute, and the total abandonment by BIA of any effort to accomplish that objective, is in relation to section 22, 25 U.S.C. §677u (1964), App. xvi. Though Congress declared that the Secretary was to protect the rights of members of the tribe who were "non compos mentis, or, in the opinion of the Secretary, *in need of assistance in conducting their affairs*," (emphasis added), the BIA read the provision as if it said incompetent *only*. A. 205. Thus, persons whose need of assistance was painfully apparent, such as Mrs. Hendricks who "spent \$6,000.00 for 200 sheep" and reported that "she lost her sheep and did not know what became of them." A. 486, were given no assistance whatever because they were not technically incompetent. The need of virtually every terminated Ute for "assistance" was determined by elaborate social workers files compiled on every terminated Ute. Significantly, no files were compiled on the full-bloods.

¹⁵⁶ 428 F.2d 491 (10th Cir. 1970) *cert. denied* 400 U.S. 926 (1970).

of the first refusal provisions," though there is in fact an abundance of such evidence contained in the record in this case. In fact, AUC even requested leave to appear *amicus curiae* in *Probst* to advise the Court of Appeals of the legislative history and other evidence indicating that its *Probst* decision was in error, but the request was denied. The Court of Appeals reliance on *Probst* under these circumstances, is an unwarranted extension of the doctrine *stare decisis* and this Court should now consider the evidence on the meaning of "member of the tribe" which was ignored below, in the interest of justice to the individual Indian.

The plain meaning of the words "members of the tribe" used in the statute includes the individual Indian, but if there could be any doubt it was removed by the regulations: "Member of the Tribe" means all mixed-blood and full-blood members as defined in (a) and (b) of this section."¹⁵⁷ More conclusive still, the Solicitor for the Department of Interior issued a formal legal opinion in 1956 to the effect that "members of the tribe" meant the terminated Utes.¹⁵⁸

The *Probst* court misunderstood two letters of Assistant Secretaries in 1961¹⁵⁹ which concluded that the term "members of the tribe" includes the Tribe itself. The Court of Appeals took that argument one step further, and held that because it includes the Tribe it must also exclude the Tribe's members, which has the effect of reading certain provisions out of the regulations.¹⁶⁰ Fortunately, the events leading up to the two letters *Probst* relied on are in evidence in this case and give them a quite different meaning when read in historical context.

¹⁵⁷ 25 C.F.R. § 243.2 (c) (1962) (deleted 1969) App xviii. By contrast, 25 C.F.R. § 243.2 (f) contains a separate definition for "Tribe."

¹⁵⁸ Plaintiffs exhibit 41, E. 23.

¹⁵⁹ One of the two letters appears as exhibit 42A, R. 1523.

¹⁶⁰ For example, the competitive bidding provisions of 25 C.F.R. § 243.7 (1962) (deleted 1969), App. xix. If the Tribe had exclusive rights, as the Court of Appeals said, there could never be more than one acceptance.

After the Secretary's legal opinion construing "member of the tribe," it was assumed that only the *members*, and *not* the Tribe, could take advantage of the first refusal option. That presented a problem when the terminated Utes were selling their interest in two range corporations specifically authorized by section 13(3) of the Termination Act, for the only potential buyer large enough to purchase the entire range at its appraised value was the Tribe. Thus, AUC actually *requested*, in the interest of its own members, that an *exception* be made to permit the Tribe to purchase.¹⁶¹ Exhibit 37 (E. 21,) is the telegram confirming what was in fact a change in policy, justified on the basis that the individual members could act collectively through the Tribe. The two letters relied upon in *Probst* merely echoed the conclusion of the telegram; and were clearly misread, when they were considered out of context.

Additional legislative history, also not available in *Probst*, is contained in exhibits 33 and 34 (R. 1492, 1501), which are legislative history of an amendment to the provisions of the Termination Act containing the first refusal option. These documents make clear that the purpose of the amendment was to prevent improved alienation *by the Indian*. No mention is made of the Tribe.

In the face of this volume of evidence on Congressional intent, contemporaneous construction and legal precedent, the Court of Appeals nevertheless held that the "the shareholder who was here proposing to sell his stock cannot be considered to be within the group in which the right vested." A. 580. In effect, the Court of Appeals has declared that the Secretary had both the right and the duty to regulate the terminated Utes, but no obligation to exercise due care in doing so. That holding is serious error which should be reversed.

¹⁶¹ See page 24 of defendants exhibit 29, R.1436 at 1440, which is the history BIA compiled of its administration of the Termination Act:

At the request of the Tribal Business Committee of the Ute

III

APPROPRIATE RELIEF SHOULD BE DEvised

The trial judge recognized that UDC was unique, for it owned no assets, engaged in no business other than as authorized representative, and was a mere "conduit" through which the terminated Utes share of the proceeds from the minerals and judgment claims were paid.¹⁶² The Indians who sold, on the other hand, were unaware of the potential value of the stock¹⁶³ and did not even have the benefit of the red letter warnings which might have alerted them to its potential value. Non-Indian buyers and sellers, many of whom were no better informed than the Indians themselves, were in turn "materially and substantially affected [in] the offer and sell prices" by the fraudulent market making activities of Gale and Haslem.¹⁶⁴

The Indians, in their uninformed condition and subject to the other disadvantages determined by the trial judge, were induced to sell stock representing assets valued by plaintiffs experts at in excess of \$28,000 per share.¹⁶⁵ At the same time,

Indian Tribe and the Board of Directors of the Affiliated Ute Citizens approval was given by the Bureau whereby the Ute Tribe could purchase the stock certificates from the mixed-blood members in accordance with section 15 of the 1954 Act and as further detailed in the Secretary's regulations." (emphasis added) See also plaintiffs exhibit 42-B, E. 25, A. 217. Of the nine forms used, appearing at exhibit 50, E. 37-46, A. 229, only one (the notification at E. 37) so much as mentions the Tribe.

¹⁶² A. 528.

¹⁶³ A. 527.

¹⁶⁴ A. 522.

¹⁶⁵ The Reservation sits on top of one of the richest known mineral structures in the world. A. 352, 356. The mineral of primary value is oil shale, containing 110,440,000 barrells of recoverable oil, A. 357-66, 404, but it also contains oil and gas A. 353, 382 and coal A. 354, 384 in known quantities, plus an assortment of other minerals the amount of which is unknown. A. 352, 378, 384. Plaintiffs witnesses Christiansen and Hamilton both testified concerning the market value of these resources, based

the trial judge considered that damages computed on the basis of asset value "would be incongruous with the situation of numerous mixed bloods who have retained their stock," because the possibly imprudent Indians who sold would realize values immediately which their more prudent brothers who did not sell must wait a long period of time to obtain, and elected instead to fashion a remedy taking varying account of all of these factors.¹⁶⁶ An assumed fair value — fair, it must be observed, with reference to those who did not sell rather than those who did — of \$1500 per share was adopted.

The trial judge's approach was basically sound,¹⁶⁷ at least as far as it went:

upon actual sales transactions in 1963-64. A. 368-70, 406. Based upon Dr. Christiansen's estimates, which were the more conservative of the two, the actual value of the mineral assets is as follows:

Mineral	Value of total deposits underlying the Reservation	Terminated Ute's share (Col. 2 multiplied by 27.16186%)	Value per share (Col. 3 divided by 4,900)
Oil & Gas	\$ 50,136,000.00	\$ 13,621,249.30	\$ 2,779.88
Coal	57,287,991.00	15,564,344.85	3,176.40
Oil Shale	414,150,000.00	112,518,756.90	22,963.01
Dawsonite	Present but not established	Great Potential	0
Nahcolite	Present but not established	Great Potential	0
(trona)			
Gilsnoite	Present but not established	Great Potential	0
TOTALS	\$521,573,991.00	\$141,704,351.05	\$28,919.29

¹⁶⁶ A. 530. See also the trial judge's comments at A. 572.

¹⁶⁷ See, generally, *Story Parchment Co. v. Paterson Co.* 282 U.S. 555, 562-63 (1931); *Espallat v. Berlitz Schools of Languages of America*, 383 F. 2d 220, 222 (D.C. Cir. 1967); *McCORMICK ON DAMAGES* §122 (1935). As to the propriety of considering underlying mineral values, see *Montana Railway Co. v. Warren*, 137 U.S. 348, 352 (1890); *United States v. Sowards*, 339 F. 2d 401 (10th Cir. 1964); *United States v. Silver Queen Mining Co.*, 285 F. 2d 506 (10th Cir. 1960). Cf. Lattin, *Remedies of Dissenting Stockholders Under Appraisal Statutes*, 45 HARV. L. REV. 233, 262 (1930)

"We, therefore, believe that under the circumstances here it is the duty of the courts to be alert to provide such remedies as are necessary to make effective the congressional purpose. (Emphasis added.)

"It is for the federal courts 'to adjust their remedies so as to grant the necessary relief' where federally secured rights are invaded. 'And it is also well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done.'"¹⁶⁸ (citations omitted)

The trial judge failed to give effect to the corollary principles, that in fashioning a remedy (1) the plaintiff should be fully compensated and (2) the wrongdoer should not be rewarded with a windfall.¹⁶⁹ In other words, the remedy fashioned was fair to the extent that it left the selling and non selling Indians with approximately the same amount of payments from mineral royalties and Indian claims through the date of trial, but it was unfair to the extent that it failed to restore the selling shareholders to the beneficial title — that enormously valuable interest was left with the beneficiaries of the fraud.

The Court of Appeals compounded the error of the trial judge by holding that market value, *and no other factor*, could be considered in computing damages, and that "the measure of damages . . . is the profit made by the defendant on resale of stock purchased from the plaintiff."¹⁷⁰ (Emphasis added) The latter holding is untenable as a rule of damages, runs counter to the fundamental purpose of the securities laws to protect investors, and is an open invitation to fraud committed through an agent.

¹⁶⁸ J. I. Case C. v. Borak, 377 U.S. 426, 433 (1964). Accord, Mills v. Electric Auto-Lite Co., 396 U.S. 375, 386 (1970).

¹⁶⁹ See Mitchell v. Texas Gulf Sulphur Co., F.2d (10th Cir., April 26, 1971).

¹⁷⁰ A. 587

In fairness, however, the error of the trial judge was in reality the error of counsel, for the *Reynos* case was tried on a pure damage theory which did not afford the flexibility necessary under the *Borak* doctrine. Thus AUC was filed, at a point well in advance of entry of final judgment in *Reynos*, to cover the hiatus between the trial judge's selected remedy and the full restitution which is necessary. Regrettably, the trial judge failed to see the alternative remedy which AUC supplied.¹⁷¹

If UDC was improperly formed, a speedy, complete, and relatively inexpensive remedy is at hand—merely recognize that fact and confirm the rights of AUC and its members. The United States will suffer no loss, for it makes no claim to title to the minerals and agrees that they are held in trust for those beneficially entitled to them. The *Reynos* plaintiffs, in that event, have been damaged in an amount equal to the lost royalties and other payments, distributed in the form of dividends on the stock during years between 1963-64 to present. That sum is approximately the amount awarded by the trial judge.¹⁷² The purchasers of UDC stock, for the same reason, will not be injured for they have already recovered their investment, but as purchasers in transactions violating the Indian laws they have dealt at their peril, in any event.¹⁷³

The alternative is to award the Indians judgment based upon the value of the underlying assets, which by uncontroverted evidence amounts to in excess of \$28,000 per share based upon market values in 1963-64.

¹⁷¹ The pertinent dialogue between court and counsel is at A. 559-60.

¹⁷² The value of the damage elements in findings 3, 4, & 5, A.528-29 equal \$853.97 per share, and finding 4 (d), A. 503 equals \$357.00 per share. In addition, mineral royalties, which averaged \$71 per share per year at the time of trial A. 258, 326-28 for eight years equals \$568 per share. These figures are not, of course, precise as to years subsequent to trial, and additional evidence should be taken, but the sum of all three items is \$1,778.97 per share, which makes the trial judges assumed value of \$1500 per share look very conservative.

¹⁷³ See footnote 119, *supra*, and related text.

In either event, under the recent holding of this Court in *Mills v. Electric Auto-Lite Co.*,¹⁷⁴ plaintiffs should also be awarded their costs in maintaining this action, including reasonable counsel fees. Recovery of such expenses is necessary to fully restore the terminated Utes to the position of the non-selling Indians. Counsel fees, moreover, should comprehend the recovery of the mineral estate, for if they do not, other lawyers will surely not be so foolhardy as to undertake the enormous expenditure of effort necessary to right social injustices such as are involved in this case.

CONCLUSION

The facts of this case present, once more, the recurring problem of the clash between the Indian culture, with its orientation to human values and the common enjoyment of nature's bounty, with non-Indian American society, with its fixation on personal property rights and the profit motive. The plight of the terminated Ute is the plight of the entire Indian community in microcosm, and is not so much a criticism of either culture as it is a study in why a whole culture cannot be changed with the stroke of a legislator's pen and why rules against overreaching, whether they be a part of the Indian laws or the securities laws, should not be relaxed.

As in the past, it is the solemn duty of the courts to fairly adjust rights in the event of such a clash. In this case, such an adjustment should include (1) confirmation of AUC's rights as authorized representative, (2) confirmation of AUC's members beneficial interest in the minerals and (3) damages equivalent to the cash proceeds the Indian has been deprived of.

Respectfully submitted,

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¹⁷⁴ 396 U.S. 375 (1970). See also, *Sprague v. Ticonic National Bank*, 307 U.S. 161, 166 (1939).

APPENDIX OF PERTINENT STATUTES AND REGULATIONS

THE UTE TERMINATION ACT

Enacted August 27, 1954, 68 Stat. 868

Sec. 1 (25 U.S.C. § 677). *Purpose.*

The purpose of sections 677-677aa of this title is to provide for the partition and distribution of the assets of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah between the mixed-blood and full-blood members thereof; for the termination of Federal supervision over the trust, and restricted property, of the mixed-blood members of said tribe; and for a development program for the full-blood members thereof, to assist them in preparing for termination of Federal supervision over their property.

Sec. 2 (25 U.S.C. § 677a). *Definitions.*

For the purposes of sections, 677-677aa of this title—

(a) "Tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah.

(b) "Full-blood" means a member of the tribe who possesses one-half degree of Ute Indian blood and a total of Indian blood in excess of one-half, excepting those who become mixed-bloods by choice under the provisions of section 677c of this title.

(c) "Mixed-blood" means a member of the tribe who does not possess sufficient Indian or Ute Indian blood to fall within the full-blood class as herein defined, and those who become mixed-bloods by choice under the provisions of section 677c of this title.

(d) "Secretary" means Secretary of the Interior.

(e) "Superintendent" means the Superintendent of the Uintah and Ouray Reservation, Utah.

(f) "Asset" means any property of the tribe, real, personal or mixed, whether held by the tribe or by the United States in trust for the tribe, or subject to a restriction against alienation imposed by the United States.

(g) "Adult" means a member of the tribe who has attained the age of twenty-one years.

Sec. 3 (25 U.S.C. § 677b). *Method of determining Ute Indian blood.*

For the purposes of sections 677-677c of this title Ute Indian blood shall be determined in accordance with the constitution and bylaws of the tribe and all tribal ordinances in force and effect on August 27, 1954.

Sec. 4 (25 U.S.C. § 677c). *Transfer of members from full-blood roll to mixed-blood group; time; certification by Secretary.*

Any member of the tribe whose name appears on the proposed roll of full-blood members as provided in section 677g of this title and any person whose name is added to such proposed roll as the result of an appeal to the Secretary may apply to the Superintendent to become identified with and a part of the mixed-blood group; *Provided*, That such application is made within thirty days subsequent to the publication of such proposed roll or in the event of an appeal within thirty days subsequent to notification of the decision on said appeal: *And provided further*, That before such transfer is made upon the official rolls the Secretary shall first certify that, in his opinion, such change in status is not detrimental to the best interest of the person seeking such change.

Sec. 5 (25 U.S.C., § 677d). *Restriction of tribe to full-blood members after publication of final rolls; non-interest of mixed-blood members; new membership.*

Effective on the date of publication of the final rolls as provided in section 677g of this title the tribe shall thereafter consist exclusively of full-blood members. Mixed-blood members shall have no interest therein except as otherwise provided in section 677-677aa of this title. New membership in the tribe shall thereafter be controlled and determined by the constitution and bylaws of the tribe and ordinances enacted thereunder.

Sec. 6 (25 U.S.C. § 677e). *Organization of mixed-blood members; constitution and bylaws; representatives; actions in absence of organization.*

The mixed-blood members of the tribe, including those residing on and off the reservation, shall have the right to organize for their common welfare, and may adopt an appropriate constitution and bylaws which shall become effective when ratified by a majority vote of the adult mixed-blood members of the tribe at a special election authorized and called by the Secretary under such rules and regulations as he may prescribe. Such constitution may provide for the selection of authorized representatives who shall have power to take any action that is required by sections 677-677aa of this title to be taken by the mixed-blood members as a group: *Provided*, That nothing herein contained shall be construed as requiring said mixed-blood Indians to so organize if such organization is by them deemed unnecessary. In the event no such approved organization is effected, any action taken by the adult mixed-blood members, by majority vote, whether in public meeting or by referendum, but in either event, after such notice as may be prescribed by the Secretary, shall be binding upon said mixed-blood members of the tribe for the purposes of said sections.

Sec. 7 (25 U.S.C. § 677f). *Employment of legal counsel for mixed-blood members; fees.*

The mixed-blood members of the tribe as a group may employ legal counsel to accomplish the legal work required on behalf of said group under the terms of sections 677-677aa of this title, and for any other purpose by them deemed necessary or desirable; the choice of counsel and fixing of fees to be subject to the approval of the Secretary until Federal supervision over all of the members of said group and their property is terminated in the manner provided in section 677o of this title.

Sec. 8 (25 U.S.C. § 677g). *Membership rolls of full-blood and mixed-blood members; preparation and initial publication; appeal from inclusion or omission from rolls; finality of determination; final publication; inheritable interest; future membership.*

The tribe shall have a period of thirty days from August 27, 1954, in which to prepare and submit to the Secretary a proposed roll of the full-blood members of the tribe, and a proposed roll of the mixed-blood members of the tribe, living on August 27, 1954. If the tribe fails to submit such proposed rolls within the time specified in section 677-677aa of this title, the Secretary shall prepare such proposed rolls for the tribe. Said proposed rolls shall be published in the Federal Register, and in a newspaper of general circulation in each of the counties of Uintah and Duchesne in the State of Utah. Any person claiming membership rights in the tribe, or an interest in its assets, or a representative of the Secretary on behalf of any such person, within sixty days from the date of publication in the Federal Register, or in either of the papers of general circulation, as hereinbefore provided, whichever publication date is last, may file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from either of such proposed rolls. The Secretary shall review such

appeals and his decision thereon shall be final and conclusive. After disposition of all such appeals to the Secretary, and after all transfers have been made pursuant to section 677c of this title the roll of the full-blood members of the tribe, and the roll of the mixed-blood members of the tribe, shall be published in the Federal Register, and such rolls shall be final for the purposes of sections 677-677aa of this title, but said sections shall not be construed as granting any inheritable interest in tribal assets to full-blood members of the tribe or as preventing future membership in the tribe, after August 27, 1954, in the manner provided in the constitution and by-laws of the tribe.

Sec. 9 (25 U.S.C. § 677h). *Sale or other disposition of certain described lands; funds; relief of United States from liability; assigned lands.*

The business committee of the tribe for and on behalf of the full-blood members of said tribe, and the duly authorized representatives for the mixed-blood members of said tribe, acting jointly, are authorized, subject to the approval of the Secretary, to sell, exchange, dispose of, and convey to any purchaser deemed satisfactory to said committee and representatives, any or all of the lands of said tribe described as follows, to wit: [Real property descriptions omitted]

All such sales, exchanges, or other dispositions shall be made upon such terms as said committee and said authorized representatives shall deem satisfactory and may be made pursuant to bids or at private sale, and all funds or other property derived from such sales, exchanges, or other dispositions shall be subject to the terms of sections 677-677aa of this title. Consent by the tribal business committee and said authorized representatives to the sale, exchange, or other disposal of the lands herein described shall relieve the United States of any liability resulting from such sale, exchange, or other disposition. The tribal business committee and said authorized representatives

are further authorized to sell or dispose of tribal assigned lands to the assignees thereof under such terms and conditions as may be agreed upon by the said tribal business committee and said authorized representatives with the assignees, subject, however, to the approval of the Secretary.

Sec. 10 (25 U.S.C. § 677i). *Division of assets; basis; prior alienation or encumbrance; partition by Secretary upon non-agreement; assistance; management of claims and rights; division of net proceeds; applicability of usual processes of the law to originally owned stock of corporate representative and to corporate distributions.*

The tribal business committee representing the full-blood group, and the authorized representatives of the mixed-blood group, within sixty days after the publication of the final membership roll, as provided in section 677g of this title, shall commence a division of the assets of the tribe that are then susceptible to equitable and practicable distribution. Such division shall be by agreement between them subject to the approval of the Secretary. Said division shall be based upon the relative number of persons comprising the final membership roll of each group. After such division the rights or beneficial interests in tribal property of each mixed-blood person whose name appears on the roll shall constitute an undivided interest in and to such property which may be inherited or bequeathed, but shall be subject to alienation or encumbrance before the transfer of title to such tribal property only as provided in sections 677-677aa of this title. Any contract made in violation of this section shall be null and void. If said groups are unable to agree upon said division within a period of twelve months from the date of such commencement, or any authorized extension of said period granted within the discretion of the Secretary, the Secretary is authorized to partition the assets of the tribe in such manner as in his opinion will be equitable

and fair to both groups. Such partition shall give rise to no cause of action against the United States and the costs of such partition shall be paid by the tribe. The Secretary is authorized to provide such reasonable assistance as may be requested by both groups, or by either group, in formulation and execution of a plan for the division of said assets, including necessary technical services of Government employees at Fort Duchesne, Utah, and arranging for necessary consultations with representatives of Federal departments and agencies, officials of the State of Utah, and political subdivisions thereof, and members of the tribe. All unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall be managed jointly by the Tribal Business Committee and the authorized representatives of the mixed-blood group, subject to such supervision by the Secretary as is otherwise required by law, and the net proceeds therefrom after deducting the costs chargeable to such management shall first be divided between the full-blood and mixed-blood groups in direct proportion to the number of persons comprising the final membership roll of each group and without regard to the number of persons comprising each group at the time of the division of such proceeds.

The stock of any corporation organized by the mixed-blood group for the purpose of empowering the officers of such corporation to act as the authorized representatives of said mixed-blood group in the joint management with the tribe and in the distribution of unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall not be subject to mortgage, pledge, hypothecation, levy, execution, attachment or other similar process, while such stock remains in the ownership of the original stockholder or his heirs or legatees, but the interest of stockholders in any distribution by such corporation shall be subject to the

usual processes of the law. [The last paragraph, dealing with stock in corporations, was not part of the law at the time of the formation of UDC, but was added by an amendment in 1962]

Sec. 11 (25 U.S.C. § 677j). *Advances or expenditures from tribal funds; restrictions on mixed-blood group until adoption of plan for terminating supervision.*

Notwithstanding any other provision of existing law, the tribal funds now on deposit or hereafter deposited in the United States Treasury to the credit of the tribe or either group thereof, shall be available for advance to the tribe or the respective groups, or for expenditure, for such purposes, including per capita payments, as may be designated by the Tribal Business Committee for the full-blood members, and by the authorized agents of the mixed-blood members, and in either event subject to the approval of the Secretary: *Provided*, That the aggregate amount of the expenditures and advances authorized by this section for the mixed-blood group shall not exceed 50 per centum of the total funds of said mixed-blood group after such division, until said mixed-blood group has adopted a plan approved by the Secretary for termination of Federal supervision of said mixed-blood group, as required under section 677i of this title. After such termination of Federal supervision, per capita payments to the mixed-blood group shall not be subject to approval of the Secretary.

Sec. 12 (25 U.S.C. § 677k). *Adjustment of debts in making per capita payments to mixed-blood members; execution of mortgages on property.*

Fifty per centum of all per capita payments to any individual mixed-blood member made pursuant to any division or distribution under sections 677-677aa of this title shall have deducted therefrom any sum or sums of money owed by such member to the tribe, whether due or to become due, unless in

the opinion of the Secretary said debts are not adequately secured in which event the entire per capita payment shall be subject to such offset. Any other division, partition or distribution of property to any individual mixed-blood member made pursuant to sections 677-677aa of this title shall be subject to a mortgage to be made in favor of the tribe securing the payment of all sums of money owed by him to the tribe on the date of such division, partition or distribution to such individual mixed-blood member. The Secretary shall require the execution of any mortgage required under this section as a condition to any such division, partition or distribution.

Sec. 18 (25 U.S.C. § 677l). *Distribution to individual members of mixed-blood group; preparation and approval of plan; assistance; provisions permitted in plan.*

After the adoption of a plan for the division of the assets between the two groups, a plan for distribution of the assets of the mixed-blood group to the individual members thereof shall be prepared and ratified by a majority of said group, within the period of six months from such adoption and presented to the Secretary for approval. The Secretary is authorized to provide such reasonable assistance, including necessary technical service of Government employees at Fort Duchesne, Utah, and arranging for necessary consultations with representatives of Federal departments and agencies, officials of the State of Utah and political subdivisions thereof, as may be required by the mixed-blood group in the preparation of such plan.

The plan for division of the assets among the members of the mixed-blood group may include:

(1) Complete disposition of all cash assets of said group, reserving, however, sufficient funds to cover—

(i) The proportionate share of said mixed-blood group in and to all expenses incurred in effecting the purposes of

sections 677-677aa of this title, including, but not limited to, the necessary expense incurred under this section and section 677m of this title;

(ii) the just and proportionate share of the mixed-bloods in the expense incurred in the prosecution of the claims of the tribe, or the bands thereof, against the United States; and

(iii) the determinable and estimated administrative costs and expenses of any mixed-blood organization authorized by sections 677-677aa of this title, including lawful and reasonable salaries and fees of authorized agents, officers and employees of said mixed-blood group.

(2) Partition of the lands of the mixed-blood group, excepting all gas, oil, and mineral rights, to corporations, partnerships, or other legal entities, and to trustees, and the individual members of said groups, quality and quantity relatively considered, according to the respective rights and interests of the parties, located so as to embrace, as far as practicable, any improvements lawfully made by the person or persons receiving such land. The value of the improvements made, under a valid lease or assignment from the tribe, shall be excluded from the valuation in making allotments to the lessee or assignee, and the land must be valued without regard to such improvements unless the lease or assignment, under which said improvements were made, provided that such improvements should become the property of the tribe. In the making of any partition due consideration shall be given to all of the rights and interests of the person or persons receiving the property, and all of the rights and interests of the other members of the tribe. Two or more of the members of said mixed-blood group may obtain their share of property as tenants in common, as joint tenants, or in any other lawful manner when such members agree among themselves as to the manner in which they desire to receive

such title. When it appears that an equitable partition cannot be made among the members of said mixed-blood group without prejudice to the rights and interests of some of them, and yet a partition is directed by the group, the members of said group may voluntarily determine compensation to be made by one party to another on account of the inequity. In all cases where equity is agreed upon by the members of said mixed-blood group, such compensatory adjustment among the parties, according to the principles of equity, must be approved by the Secretary. In the event of a failure to agree upon an equitable compensatory adjustment among the parties the Secretary shall make such adjustment and his decision shall be final.

(3) Organization of corporations for the grazing of livestock, handling of water and water rights, and the shares therein may be issued to the members of said group in proportion to their interests in the assets of such corporations. When, in the opinion of said mixed-blood group, it is to the best interest of said group to transfer a portion of the assets of said group to a corporation or other legal entity for any purpose, the Secretary is authorized to make such transfer.

(4) A transfer of assets to one or more trustees designated by said group who shall hold title to all or any part of the property of said group for management or liquidation purposes under terms and conditions prescribed by said mixed-blood group. The Secretary is authorized to make such transfer, and approve the trustees, and the terms and conditions of the trust.

(5) Sale of any portion of the assets of said group subject to the approval of the Secretary. In addition to the sales herein otherwise authorized, authority is granted to the authorized representatives of said group to sell any property of said group when, in the opinion of the majority of said mixed-blood group, a practicable partition cannot be made, or for any other reason

it is deemed to the best interests of the group, and the proceeds of such sales shall be distributed equitably among the members of said mixed-blood group, after deducting reasonable cost of sale and distribution.

Sec. 14 (25 U.S.C. § 677m). *Same; procedure by Secretary if distribution not completed within seven years from August 27, 1954.*

In the event all the tribal assets, susceptible to equitable and practicable distribution, distributed to the mixed-blood group under the provisions of section 677i of this title, are not, within seven years from August 27, 1954, distributed to the individual mixed-blood members as contemplated in the plan to be adopted in accordance with the provisions of section 677l of this title, so as to effectively terminate Federal supervision over said assets; then the Secretary shall proceed to make such distribution in a manner, in his discretion, deemed fair and equitable to all members of said group, or convey such assets to a trustee for liquidation and distribution of the net proceeds, or convey such assets to the persons entitled thereto as tenants in common.

Sec. 15 (25 U.S.C. § 677n). *Disposal by mixed-blood members of their individual interests in tribal assets; requisites and conditions.*

Any member of the mixed-blood group may dispose of his interest in the tribal assets prior to termination of Federal supervision, subject to the approval of the Secretary. In the event a member of the mixed-blood group determines to dispose of his interests in any of said real property at any time within ten years from August 27, 1954, he shall first offer it to the members of the tribe, and no sale of any interest, prior to termination of Federal supervision, shall be authorized without such offer to said members of the tribe in such form as may be approved by

the Secretary. After termination of Federal supervision the requirement of such offer; in form to be approved by the Secretary, shall be a covenant to run with the land for said ten-year period, and shall be expressly provided in any patent or deed issued prior to the expiration of said period.

Sec. 16 (25 U.S.C. § 677o). *Termination of restrictions on individually owned property of the mixed-blood group.*

(a) *Transfer of control of trust property; removal of sales restrictions.*

When any mixed-blood member of the tribe has received his distributive share of the tribal assets distributed to the mixed-blood group under the provisions of section 677i of this title, whether such distribution is made in part or in whole to a corporation, partnership, or trusteeship in which he is interested, or otherwise, the Secretary is authorized and directed to immediately transfer to him unrestricted control of all other property held in trust for such mixed-blood member by the United States, and shall further remove all restrictions on the sale or encumbrance of trust or restricted property owned by such member of the tribe, and Federal supervision of such member and his property shall thereby be terminated, except as to his remaining interest in tribal property in the form of any unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other tribal assets not susceptible to equitable and practicable distribution, all of which shall remain subject to the terms of sections 677-677aa of this title, notwithstanding anything contained in said sections to the contrary.

(b) *Partition or sale by Secretary prior to removal of restrictions.*

Prior to the removal of restrictions in accordance with the provisions of subsection (a) of this section on land owned by more than one person, the Secretary may—

(1) upon request of any of the owners, partition the land and issue to each owner an unrestricted patent or deed for

his individual share, unless such owner is a full-blood member of the tribe or other Indian who owns trust or restricted property, in which event a trust patent or restricted deed shall be issued and such trust may be terminated or such restrictions may be removed when the Secretary determines that the need therefor no longer exists; (2) upon request of any of the owners and a finding by the Secretary that partition of all or any part of the land is not practicable, cause all or any part of the land to be sold at not less than the appraised value thereof and distribute the proceeds of sale to the owners: *Provided*, That before a sale any one or more of the owners may elect to purchase the other interests in the land, or the tribe may elect to purchase the entire interest in the land, at not less than the appraised value thereof.

Sec. 17 (25 U.S.C. § 677p). *Tax exemption; exceptions and time limits; valuation for income tax on gains or losses.*

No distribution of the assets made under the provisions of sections 677-677aa of this title shall be subject to any Federal or State income tax: *Provided*, That so much of any cash distribution made under said sections as consists of a share of any interest earned on funds deposited in the Treasury of the United States shall not by virtue of said sections be exempt from individual income tax in the hands of the recipients for the year in which paid. Property distributed to the mixed-blood group pursuant to the terms of said sections shall be exempt from property taxes for a period of seven years from August 27, 1954, unless the original distributee parts with title thereto, either by deed, descent, succession, foreclosure of mortgage, sheriff's sale or other conveyance; *Provided*, That the mortgaging, hypothecation, granting of a right-of-way, or other similar encumbrance of said property shall not be construed as a conveyance subjecting said property to taxation under the provisions of this section. After seven years from August 27, 1954, all property

distributed to the mixed-blood members of the tribe under the provisions of section 677-677aa of this title, and all income derived therefrom by the individual, corporation, or other legal entity, shall be subject to the same taxes, State and Federal, as in the case of non-Indians; except that any corporation organized by the mixed-blood members for the purpose of aiding in the joint management with the tribe and in the distribution of unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall not be subject to corporate income taxes. Any valuation for purposes of Federal income tax on gains or losses shall take as the basis of the particular taxpayer the value of the property on the date title is transferred by the United States pursuant to said sections. [Provisions respecting exemption from corporate income taxes were not part of the original Act, but were added later by amendment.]

Sec. 18 (25 U.S.C. § 677q). *Applicability of decedents' estates laws to individual trust property of mixed-blood members.*

The laws of the United States with respect to probate of wills, determination of heirship, and the administration of estates shall apply to the individual trust property of mixed-blood members of the tribe until Federal supervision is terminated. Thereafter, the laws of the several States, Territories, possessions, and the District of Columbia within which such mixed-blood members reside at the time of their death shall apply.

Sec. 19 (25 U.S.C. § 677r). *Indian claims unaffected.*

Nothing in sections 677-677aa of this title shall affect any claim heretofore filed against the United States by the tribe, or the individual bands comprising the tribe.

Sec. 20 (25 U.S.C. § 677s). *Valid leases, permits, liens, etc., unaffected.*

Nothing in sections 677-677aa of this title shall abrogate any valid lease, permit, license, right-of-way, lien, or other contract heretofore approved.

Sec. 21 (25 U.S.C. § 677t). *Water rights.*

Nothing in sections 677-677aa of this title shall abrogate any water rights of the tribe or its members.

Sec. 22 (25 U.S.C. § 677u). *Protection of minors, persons non compos mentis, and other members needing assistance; guardians.*

For the purposes of sections 677-677aa of this title, the Secretary shall protect the rights of members of the tribe who are minors, non compos mentis; or, in the opinion of the Secretary, in need of assistance in conducting their affairs, by such means as he may deem adequate, but appointment of guardians pursuant to State laws, in any case, shall not be required until Federal supervision has terminated.

Sec. 23 (25 U.S.C. § 677v). *Termination of Federal trust; publication; termination of Federal services; application of Federal and State laws.*

Upon removal of Federal restrictions on the property of each individual mixed-blood member of the tribe, the Secretary shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to such individual is terminated. Thereafter, such individual shall not be entitled to any of the services performed for Indians because of his status as an Indian. All statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to such member over which supervision has been terminated,

and the laws of the several States shall apply to such member in the same manner as they apply to other citizens within their jurisdiction.

Sec. 24 (25 U.S.C. § 677w). *Presentation of development program for full-blood group to eventually terminate Federal supervision; annual progress reports.*

Within three months after August 27, 1954, the business committee of the tribe representing the full-blood group thereof shall present to the Secretary a development program calculated to assist in making the tribe and the members thereof self-supporting, without any special Government assistance, with a view of eventually terminating all Federal supervision of the tribe and its members. The tribal business committee, representing the full-blood group shall, through the Secretary of the Interior, make a full and complete annual progress report to the Congress of its activities, and of the expenditures authorized under sections 677-677aa of this title.

Sec. 25 (25 U.S.C. § 677x). *Citizenship status unaffected.*

Nothing in sections 677-677aa of this title, shall affect the status of the members of the tribe as citizens of the United States.

Sec. 26 (25 U.S.C. § 677y). *Execution by Secretary of patents, deeds, etc.*

The Secretary shall have authority to execute such patents, deeds, assignments, releases, certificates, contracts, and other instruments, as may be necessary or appropriate to carry out the provisions of sections 677-677aa, of this title, or to establish a marketable and recordable title to any property disposed of pursuant to said sections.

Sec. 27 (25 U.S.C. § 677z). *Rules and regulations; tribal or group referenda.*

The Secretary is authorized to issue rules and regulations necessary to effectuate the purposes of sections 677-677aa of

this title, and may, in his descretion, provide for tribal or group referenda on matters pertaining to management or disposition of tribal or group assets.

Sec. 28 (25 U.S.C. § 677aa). *Procedure by Secretary upon non-agreement between mixed-blood and full-blood groups.*

Whenever any action pursuant to the provisions of sections 677-677aa of this title requires the agreement of the mixed-blood and full-blood groups and such agreement cannot be reached, the Secretary is authorized to proceed in any manner deemed by him to be in the best interests of both groups.

PERTINENT REGULATIONS UNDER THE TERMINATION ACT

(25 C.F.R. Part 243)

Section 243.2. *Definitions.* As used in this part:

(c) "Member of the Tribe" means all mixed-blood and full-blood members as defined in (a) and (b) of this section.

(f) "Tribe" means the Ute, Indian Tribe of the Uintah and Ouray Reservation, Utah.

(h) "Termination of Federal supervision" means termination of Federal supervision over the particular real estate

involved by the issuance of a patent in fee or other similar title document, and does not mean termination of the wardship relationship between the Indian and the United States on the occasion of the issuance of a so-called "Termination Proclamation" (25 U.S.C. 677v).

Section 243.5 Offer. Any mixed-blood member of the tribe desiring to dispose of his interest in real property, as herein defined, prior to termination of Federal supervision over such property, must notify the Superintendent of his desire to dispose thereof, and shall state the price and terms upon which the land is offered for sale or which constitute a bona fide offer to purchase.

Section 243.6 Notice of offer. The Superintendent shall notify in writing the corporations and the tribal business committee of the tribe of any offer of sale, and shall post notices of the offer of sale in a conspicuous place in the Uintah and Ouray Agency Office at Fort Duchesne and in the Post Offices of the towns of Roosevelt, Whiterocks, Randelett, Myton, and Fort Duchesne, Utah, for a period of at least ten days. The notices shall specifically describe the terms upon which such sale is to be made and the final date for acceptance of offer from members of the tribe by submission of an appropriate bid.

Section 243.7 Acceptance of offer. Upon receipt of an acceptance of the offering from any member of the tribe to purchase such land, the Superintendent shall immediately notify the mixed-blood member making the offer to sell such land and the sale may be completed in accordance with the offer and acceptance. In the event two or more members of the tribe submit an acceptance of the seller's offer, the Superintendent shall call for sealed bids from the parties submitting such acceptances and the sale shall be made to the highest

bidder provided the highest bid equals or exceeds the seller's offering price.

Section 243.8 *Certificate of non-acceptance.* If no acceptance is made by a member of the tribe to purchase such land, the Superintendent shall notify the mixed-blood member making such offer that ~~no member of the tribe has accepted the offer to sell and the mixed-blood member may then sell~~ such land at any time within six months thereafter to any person at the same or greater price and upon the same terms and conditions upon which it was offered to the members. The Superintendent shall furnish to such purchaser a certificate, properly acknowledged for recording, certifying that a proper offer at a price and on terms specified in the certificate was made to members of the tribe in accordance with law and the regulations of the Secretary.

Section 243.9 *Re-offer.* If no sale is made, within a six months' period after the seller has been so notified by the Superintendent, then a new offer must be made to the members of the tribe in the manner set forth in section 243.5.

Section 243.10 *Subsequent sale.* If, for any reason, a sale should not be consummated after an acceptance by a member of the tribe, as provided in section 243.7, a new offer to sell shall be made to the members of the tribe in the manner set forth in section 243.5.

Section 243.12 *Sale of stock in the corporations.* In the event any stockholder of the corporation determines to sell or dispose of any stock owned by him in any of the corporations prior to August 27, 1964, he shall first offer it to the members of the tribe in accordance with the provisions set forth in the Articles of Incorporation and in the certificate of stock of such corporation and in the manner provided in §§ 243.5 through 243.10, as far as practicable.

SUPREME COURT, U. S.

Supreme Court U.S.

FILED

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In The
Supreme Court of the United States

October Term, 1970

No. 1331

70-78

**Affiliated Ute Citizens of the State
of Utah, Et Al.,**

Petitioners,

—v.—

United States, Et Al.

**On Writ of Certiorari to the United States Court of
Appeals For the Tenth Circuit**

BRIEF FOR THE RESPONDENT

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In The
Supreme Court of the United States

October Term, 1970

No. 1331
[REDACTED]

Affiliated Ute Citizens of the State
of Utah, Et Al.,

Petitioners,

—v.—

United States, Et Al.
[REDACTED]

On Writ of Certiorari to the United States Court of
Appeals For the Tenth Circuit
[REDACTED]

BRIEF FOR THE RESPONDENT

John B. Gale
[REDACTED]

OPINIONS BELOW

The orders of the United States District Court for the District of Utah entering judgment for plaintiffs in *Reynos v. First Security Bank* (Reynos herein), and dismissing *Affiliated Ute Citizens of the State of Utah v. United States* (AUC herein) on the merits and for lack of jurisdiction are unreported. The opinions of the Court of Appeals for the Tenth Circuit reversing the judgment in *Reynos* and affirming the dismissal of *AUC* are reported at 431 F.2d 1337 and 1349, respectively (A. 576, 587).

JURISDICTION

The decisions of the Court of Appeals For the Tenth Circuit (Court, of Appeals herein) were simultaneously filed on June 19, 1970 and the motions for rehearing in each case were simultaneously denied on November 14, 1970 (A. 588). A petition for rehearing *in banc* was filed in *Reynos* but was not considered (A. 3). A petition for certiorari was filed on February 9, 1971, and granted on April 19, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

STATUTES AND REGULATIONS INVOLVED

The Ute Termination Act (Termination Act) is published at 25 U.S.C. §§ 677-677aa.

The relevant securities provisions are Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 adopted thereunder (17 C.F.R. 240.10b-5) (Rule 10b-5 or Rule) which both read as follows:

15 U.S.C. § 78j:

It shall be unlawful for any person, directly or indirectly, by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange —

* * *

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Rule 10b-5: ..

It shall be unlawful for any person, directly or indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,

(1) to employ any device, scheme, or artifice to defraud.

(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

in connection with the purchase or sale of any security.

QUESTIONS PRESENTED

1. What must be proven in order to recover damages in a private action based on an alleged violation of Rule 10b-5?

2. What is the proper measure of damages under a private action based on an alleged violation of Rule 10b-5?

STATEMENT OF THE CASE

This brief is submitted on behalf of the respondent, John B. Gale (herein "Gale"). While the brief of the petitioners covers two separate and distinct cases, Gale was a defendant only in *Reynos*. The complaint in *Reynos* sets forth two counts — count one based on an alleged violation of Regulation 10b-5 of the Securities and Exchange Commission (17 C.F.R., Sec. 240, 10b-5) and count two alleging that respondent First Security

Bank of Utah, N.A. (herein the "Bank") and respondent United States of America breached a fiduciary duty to the petitioners. The only count against Gale was the alleged violation of Rule 10b-5 (A. 7, 8).

Petitioners are members of the Ute Indian Tribe and reside on the Uintah and Ouray Reservation in the state of Utah. There are four hundred and ninety mixed-bloods in the tribe each of whom received 10 shares of stock in the Ute Distribution Corporation (herein UDC). Eighty-five mixed-bloods brought this suit and the rights of only the twelve "bellwether" plaintiffs are considered here. The rights of the other seventy-three will be determined based upon the decision made by this Court.

The alleged violation of Rule 10b-5 by Gale arises in connection with the sale of 122 shares of UDC stock by the twelve petitioners. At the time of the sales, Gale was an assistant manager of the Bank at its Roosevelt, Utah Office. He was notary of the public and had authority to guaranty signatures on stock certificates. Gale purchased a total of ten shares of UDC stock, five shares from Glen M. Reed (A. 474, 475) and five shares from Letha Harris Wopsock (A. 480). Gale's connection with the other sales by petitioners was limited to notarizing their affidavits and guaranting their signatures on the stock power when they sold their UDC stock. These services were performed by Gale at the request of petitioners (A. 512). While Gale only purchased ten shares of the UDC stock from two of the twelve petitioners, the Trial Court found that Gale had violated Rule 10b-5 in connection with every sale of stock by all twelve petitioners (A. 574, 575).

The Court of Appeals refused to lump all the petitioners together as the Trial Court had done and ruled that each petitioner stated a separate cause of action against each of the separate defendants (A. 583) and, therefore, ruled that Gale was

not liable to the petitioners for performing the ministerial services of notarizing and guaranting their signatures. The Court of Appeals found that Gale had purchased UDC stock from two petitioners and that he had misrepresented the prevailing market price of the UDC stock, but the Court of Appeals further found that in the transactions, the two petitioners did not rely upon the misrepresentation of Gale and, therefore, concluded that Rule 10b-5 had not been violated.

The facts of each sale made by the twelve petitioners are vital to this appeal and are, therefore, set forth in the following paragraphs. All shares of stock mentioned are shares of UDC stock and were sold pursuant to Section 243.12 of 25 C.F.R. Part 243 (Brief of Petitioner, App. XX). Pursuant to this regulation all sales of UDC stock prior to August 27, 1964, were first offered to members of the tribe.

1. GLEN M. REED

On July 8, 1964, Mr. Reed sold five shares of his stock to Gale for \$350 per share. Mr. Reed was 45 years of age at the time, was a high school graduate and a veteran of the United States Army. Reed offered his stock to members of the tribe for \$350 per share but no one accepted his offer. He subsequently sold to Gale. Gale did not advise Mr. Reed that he was purchasing the stock for Neal H. Phelps and Esther Phelps of Arizona, nor that they were paying him \$530 per share for the stock (A. 474, 475).

Mr. Reed sold five shares of his stock on August 30, 1964, to Verl Haslem (A. 475, 476). Gale worked with Haslem at the Bank but had no connection with this transaction.

2. FRED LAROSE BURSON

Mr. Burson sold six shares of his stock to R. Earl Dillman

for two 1956 model Ford automobiles and \$1,000 in cash after he had offered the shares to the tribe for \$2,500 and no one had accepted his offer. Gale had no connection with this sale other than guaranteeing Mr. Burson's signature on the stock power. (A. 476, 477).

In December of 1963, Mr. Burson sold four of his shares to one Jack Turner for a trailer house. The shares were first offered to the tribe for a total of \$2,000 but no one accepted the offer. At the time of the sale, Mr. Burson signed the stock power and affidavit in the presence of Gale at the Roosevelt, Utah branch of the Bank. The signatures on both documents were guaranteed and notarized respectively on February 10, 1964, by Gale (A. 477, 478) and this was his only connection with the sale.

3. LETHA HARRIS WOPSOCK

Mrs. Wopsock sold five shares of her stock to Clyde Murray on August 4, 1963. Gale notarized the affidavit which stated that she had received \$2,500 and guaranteed her signature on a stock power. The Court found that in connection with this transaction Gale received a fifty cent notary fee which was paid to the Bank (A. 478, 479).

On or about February 24, 1964, Mrs. Wopsock transferred two shares of her stock to one Bill Hoopes for \$1,400. Here again the Court found that Gale's only connection with the transaction was that he guaranteed her signature on the stock power and notarized the affidavit (A. 479, 480).

On August 28, 1964, Mrs. Wopsock sold three additional shares to Mr. Hoopes for \$1,000 and her signature on the stock certificates was guaranteed by Gale (A. 479, 480).

Some time after August 27, 1964, Mrs. Wopsock sold three

shares of her stock to Gale for \$350 per share. Gale did not tell her that the stock would be resold to Norval R. Johnson and Fern Johnson at a higher price. Mrs. Wopsock was, however, aware of the value of the stock, having sold two of her shares on February 24, 1964, for \$700 per share. Mrs. Logan at the Uintah Ouray Agency had advised Mrs. Wopsock that the Ute Distribution stock had a value in excess of \$700 but nevertheless, she sold the three shares to Gale for \$350 per share (A. 479, 480). In October, 1964, she sold one share to Mr. Gale for \$400 and in November, 1964, she sold an additional share to him for \$350 (A. 480).

4. LOUISE ALLEN CASE

On November 6, 1963, Mrs. Case sold five shares to LaVere Labrum for a 1957 Ford automobile and \$1,700. She had previously offered the shares for sale at the Uintah Ouray Agency on September 9, 1963, for \$2,500 and no acceptance of the offer was received. On November 6, 1963, she signed the stock power and the affidavit in the presence of Gale at which time he guaranteed and notarized the signatures upon the respective documents. The Trial Court found that Gale received nothing for his services except a fifty cent notary fee which was paid to the Bank (A. 481, 482).

Later Mrs. Case sold three shares to Richard Murray for \$440 per share. She had offered five shares for sale at the Uintah and Ouray Agency for \$2,500 but no one had accepted her offer. The Court found that Gale had guaranteed and notarized the signatures of Mrs. Case on an affidavit and a stock power which were dated May 7, 1964. The Trial Court also found that the affidavit and stock power were signed in blank and later notarized by Gale. There is no evidence that Gale received anything from the transaction.

In June of 1964, Mrs. Case sold two shares to Dick E.

Bastion for \$800 after the shares were offered for sale to members of the tribe and no one had accepted the offer (A. 482, 483). There is no evidence that Gale was aware of this transaction.

6. MELVIN REED

Mr. Reed sold ten shares of stock to one Richard Murray for a 1959 Cadillac and approximately \$505. The ten shares had been offered for sale for the sum of \$6,500 at the Uintah Ouray Agency on September 27, 1963. No acceptance of the offer was received. On March 11, 1964, Mr. Reed executed both a stock power and an affidavit; both were blank forms at the time they were signed and both were later guaranteed and notarized, respectively, by Gale. In reply to Gale's question of whether Reed had gotten the money the latter said "everything went square" (A. 485). The Trial Court did not find that Gale participated in this transaction in any manner other than to notarize and guarantee the signature of Mr. Reed (A. 484, 485).

7. MARGUERITE MURRAY HENDRICKS

November 5, 1963, Mrs. Hendricks sold five shares to Clyde H. Murray for a 1962 Comet automobile. These shares had been offered to the full blood Indians for \$700 per share but no one had accepted her offer. Mrs. Hendricks signed a stock power and her signature was guaranteed by Gale. The Court stated that "Gale did not participate in the sales transactions except as in these findings otherwise indicated" (A. 487, 488).

On February 18, 1964, she sold five shares of stock to Richard Murray in exchange for real property in Leola, Utah. She signed a stock power and an affidavit which were dated February 18, 1964. Her signatures were notarized and guaran-

teed by Gale. The Court notes that Gale did not participate in the transaction and received only a fifty cent notary fee which was paid to the Bank (A. 487, 488).

8. JOSEPH ARTHUR WORKMAN

Mr. Workman, on or about February 10, 1964, sold six shares of stock to Robert Huish for \$3,000. At the time of the sale, he signed an affidavit and a stock power before Gale who notarized Mr. Workman's signature on the affidavit and guaranteed his signature on the stock power. Gale had no other contract with this transaction (A. 489, 490).

On November 27, 1964, Workman sold one share of stock to Verl Haslem for \$350. Gale had absolutely nothing to do with this transaction (A. 490).

The Trial Court found that Workman had been a member of the Board of Directors of the Affiliated Ute Citizens and that he knew and understood that his Ute Distribution Corporation stock represented an interest in the tribal minerals (A. 490, 491).

9. LEONARD RICHARD BURSON

On or about November 6, 1963, Mr. Burson sold ten shares of stock to LaVere Labrum for a 1964 automobile and \$3,200 cash. Gale guaranteed Burson's signature on the stock power. The Trial Court found that Gale did not participate in the sale and received nothing from the transaction except the notary fee of fifty cents which was paid to the Bank (A. 491).

10. ORIN F. CURRY

On February 14, 1964, Mr. Curry sold one share to John Chasel and on February 19, 1964, he sold one share to Orin

Swain; both were sold for approximately \$85 and automobile repairs valued at \$400. Gale notarized the affidavit and stock powers which were signed by Mr. Curry. The Trial Court found that Gale did not participate in the sale transaction and received nothing but a fifty cent notary fee which was paid to the Bank (A. 491-493).

On March 24, 1964, Mr. Curry sold three shares to one Clyde R. Murray for approximately \$1,800 cash. On the date of sale he executed the stock power and affidavit before Gale, who guaranteed his signature and notarized the affidavit. The Trial Court found that Gale did not participate in the sale transactions and received nothing but a fifty cent notary fee which was paid to the Bank (A. 491-493).

On March 24, 1964, Mr. Curry sold three shares to one Clyde R. Murray for approximately \$1,800 cash. On the date of sale he executed the stock power and affidavit before Gale who guaranteed his signature and notarized the affidavit. The Trial Court found that Gale did not participate in the sale transactions and received nothing but a fifty cent notary fee which was paid to the Bank (A. 493).

On or about August 18, 1964, Mr. Curry sold two shares of stock to Dick Bastion for \$300 per share. On the date of the sale, his signature was guaranteed on the stock power by Gale. The Trial Court found that except as in these findings indicated, Gale did not participate in the sales transaction (A. 493, 494).

Gale did not participate in any way in the following transactions:

(1) On October 23, 1964, Curry sold one share to Bastion for \$300 cash (A. 493, 494).

(2) On December 4, 1964, he sold an additional share to Dick Bastion for \$300 cash (A. 494).

(3) On January 4, 1965, he sold a third share to Dick Bastion for \$300 cash (A. 494).

Curry was very prominent in tribal affairs. He knew the Ute Distribution Corporation owned minerals, land and possible future money claims against the United States Government. He was in financial need when he sold his stock (A. 494, 495).

11. STEWART EUGENE REED

On or about October, 1963, Mr. Reed sold five shares to Clyde L. Murray for an automobile and \$300 cash. He executed a stock power and an affidavit and his signatures were respectively guaranteed and notarized by Gale. The Trial Court found that except as in these findings otherwise indicated, Gale did not participate in the sale transactions (A. 494-496).

On February 21, 1964, he sold five shares to Wallace A. Davis for an automobile and \$700 cash. Gale did not participate in this transaction in any way (A. 495, 496).

12. RICHARD H. CURRY, SR.

On or about November 6, 1963, Mr. Curry sold five shares of stock to Clyde R. Murray for \$500 a share. Gale guaranteed Curry's signature on the stock power. The Trial Court found that except as otherwise indicated, Gale did not participate in the sale negotiation and received nothing from the transaction (A. 497).

On or about September 2, 1964, Mr. Curry transferred three shares of stock to Richard Murray for \$300 a share (A. 498).

On or about September 14, 1964, Mr. Curry transferred two shares to Gordon E. Harmston and Clara Mae Harmston

and his signature on the stock certificates was guaranteed by Gale. The Trial Court found that except as otherwise indicated Gale had nothing to do with the transaction (A. 497, 498).

ARGUMENT

I

THE CONDUCT OF GALE DID NOT VIOLATE RULE 10b-5

This Court must determine whether the actions of Gale, as outlined in the preceding sales transactions, violated Rule 10b-5.

Rule 10b-5 was adopted by the Securities and Exchange Commission of 1942 and is almost identical to Section 17 (a) of the Securities Act of 1933. It was designed to provide the Securities and Exchange Commission with a means of dealing with purchasers as well as sellers. See *Birnbaum v. New Port Steel Corp.* 193 F. 2d 461 (2d Cir. 1952), *cert. denied*, 343 U.S. 956 (1952). Rule 10b-5 is broken down into three clauses, which describe unlawful conduct. The Court of Appeals ruled that Gale did not violate any one of the three clauses. Petitioners argue that the decision of the Court of Appeals is wrong and that Gale violated all three clauses of Rule 10b-5.

An examination of Gale's participation in the sales of UDC stock by petitioners clearly shows why the Court of Appeals decided that Rule 10b-5 had not been violated.

(1) *Petitioners Did Not Prove a Scheme to Defraud*

The Court of Appeals after reviewing the entire record concluded:

The record does not support the trial court's finding of a conspiracy, plan, or scheme to violate any duties owed to the plaintiffs by any of the defendants. The trial court was in error in so finding. (A. 586)

Petitioners point to the testimony of Richard Murray in an effort to show that profits on the resale of UDC stock were split with Gale and that such constitutes evidence of a scheme to defraud petitioners. The record, however, indicates some serious deficiencies in Murray's testimony. On cross examination Murray was not able to recall "any particular cases" where he split the commission with Gale (A. 120). In answer to a series of leading questions on redirect examination, Murray testified he had split the profit with Gale on the resale of the UDC stock to Frost, Jasper, Vannoy, Phelps, and Carpenter (A. 126). However, upon recross examination, Murray testified that Gale did not make any money on the resale of the Charles Hendricks stock to Frost or Jasper (A. 128) and he further stated that he was unable to recall how much the profit was, if any, which he split on the resale of stock to Vannoy. Gale testified that Mrs. Vannoy purchased all her stock directly and that he received no commission on it (A. 88). Murray did not know how much profit, if any, Gale made on the resale of shares to Carpenter. He then testified that he didn't know how much the profits were, if any, on any one of the transactions (A. 128, 129).

Gale testified that he did not split the profits with Murray or anyone else on the resale of any UDC stock (A. 64, 65, 76, 98).

It is the position of Gale that the Court of Appeals is correct for the reason that there is no evidence of any conspiracy, plan or scheme as required by Rule 10b-5. During 1963 and 1964 there were at least 33 persons acting independent of each other and in competition with one another who purchased stock from the mixed-bloods (A. 129). One of these persons was Robert Huish who purchased six shares of UDC stock from petitioner Joseph Arthur Workman for \$3,000 (A. 489, 490). It is impossible to show any connection between Gale and Robert Huish or between Gale and any other person who purchased stock from the petitioners (A. 489, 490).

Convincing evidence of a lack of conspiracy, plan or scheme on the part of Gale is the fact that in the two transactions in which he was involved, both Mrs. Wopsock and Mr. Glen M. Reed sought out Gale and requested that he purchase their stock (A. 479, 480; 167 through 173).

(2) Petitioners Failed to Prove Reliance.

The Trial Court and the Court of Appeals found that there had been a misrepresentation and an omission to state a material fact by Gale in the transactions wherein he acquired five shares of UDC stock from Mrs. Wopsock and five shares from Glen M. Reed.

The Trial Court did not find that Mrs. Wopsock and Glen M. Reed sold their UDC stock to Gale in reliance upon the misrepresentation and omission of Gale (A. 586). It was due to this failure to prove reliance that the Court of Appeals ruled that petitioners had failed to prove a causal connection between the misrepresentation and the damages sustained by them.

The Court of Appeals properly recognized that petitioners' action is not based on common law fraud or deceit but is more properly to be classified as a tort arising from the violation of a criminal statute. Rule 10b-5 itself does not provide for civil liability if it is violated but the courts have interpreted the Rule as "implying" civil liability. The first court decision so implying civil liability under Rule 10b-5 was the case of *Kardon v. National Gypsum Co.* 69 F. Supp. 512 (E.D. Pa. 1946); 73 F. Supp. 798 (E.D. Pa. 1947). In that case Judge Kirkpatrick, in denying a motion of the defendants to dismiss, said:

It is not, and cannot be, questioned that the complaint sets forth conduct on the part of the Slavins directly in violation of the provisions of Sec. 10(b) of the Act and of Rule [10b-5] which implements it. It is

also true that there is no provision in Sec. 10 or elsewhere expressly allowing civil suits by persons injured as a result of violation of Sec. 10 or of the Rule. However, "The violation of a legislative enactment by doing a prohibited act, or by failing to do a required act, makes the actor liable for an invasion of an interest of another if; (a) the intent of the enactment is exclusively or in part to protect an interest of the other as an individual; and (b) the interest invaded is one which the enactment is intended to protect. . . ." Restatement, Torts, Vol. 2, Sec. 286. This rule is more than merely a canon of statutory interpretation. The disregard of the command of a statute is a wrongful act and a tort. As was said in *Texas & Pacific R. Co. v. Rigsby*, 241 U.S. 33, 39, "This is but an application of the maxim, *Ubi jus ibi remedium*."

Of course, the legislature may withhold from parties injured the right to recover damages arising by reason of violation of a statute but the right is so fundamental and so deeply ingrained in the law that where it is not expressly denied the intention to withhold it should appear very clearly and plainly. The defendants argue that such intention can be deduced from the fact that three other sections of the statute (Sections 9, 16 and 18) each declaring certain types of conduct illegal, all expressly provide for a civil action by a person injured and for incidents and limitations of it, whereas Sec. 10 does not. The argument is not without force. Were the whole question one of statutory interpretation it might be convincing, but the question is only partly such. It is whether an intention can be implied to deny a remedy and to wipe out a liability which, normally, by virtue of basic principles of tort law accompanies the doing of the prohibited act. Where, as here, the whole statute discloses a broad purpose to regulate securities transactions of all kinds and, as a part of such regulation, the specific section in question provides for the elimination of all manipulative or deceptive methods in such transactions, the construction contended for by the defendants may not be adopted. In other words, in view of the general purpose of the Act, the mere omission of an express

provision for civil liability is not sufficient to negative what the general law implies.

The so-called "Tort Theory" set forth in the *Kardon* case rests upon the premise that where a legislative enactment contains no express liability provision a court may adopt that enactment as the standard of conduct which must be met in order to avoid liability or negligence. Restatement (Second) of Torts, 285-286 (1968) 63 Nw. U. L. Rev. 430, Bromberg, Securities Law: Fraud - SEC Rule 10b-5 §§ 8.6 and 2.4.

Inasmuch as petitioners' action is based in tort, the Court of Appeals ruled that petitioners had the burden of proving the elements thereof which are 1) a material misrepresentation or omission, 2) reliance, 3) damages. Judge Seth speaking for the Court of Appeals stated:

In the case before us the facts of misrepresentation have been shown as to several of the transactions. The record, however, does not contain any evidence relating to reliance by the plaintiffs on the representations of the defendants Gale and Haslem. This is a necessary element of the cause alleged. *List v. Fashion Park, Inc.* 340 F. 2d 457 (2d Cir.), considers, defines, and requires both materiality of the representation and reliance. See also 16 U.C.L.A. Rev. 404; 63 Nw. U.L. Rev. 434. The plaintiffs allege that certain acts and statements of the defendants were directed to them or were the proximate cause of their damages. Thus the causal connection must be established - that in fact the loss resulted from defendants' acts - a simple and fundamental proposition in such actions for private damages. The plaintiffs' argument refers to several cases where the proceedings were brought by the SEC for enforcement. The matter of reliance was not there considered, but these are from an entirely different position (A. 586).

The Court of Appeals is supported by the decision of the 2nd Circuit, *List v. Fashion Park, Inc.*, 340 F. 2d 457 (2d Cir. 1965):

This interpretation of Rule 10b-5 is a reasonable one, for the aim of the rule in cases such as this is to qualify, as between insiders and outsiders, the doctrine of *Caveat emptor* not to establish a scheme of investors' insurance. Assuredly, to abandon the requirement of reliance would be to facilitate outsiders; proof of insiders' fraud, and to that extent the interpretation for which plaintiff contends might advance the purposes of Rule 10b-5. But this strikes us as an inadequate reason for reading out of the rule so basic an element of tort law as the principle of causation in fact. . . .

The proper test is whether the plaintiff would have been influenced to act differently then he did if the defendant had disclosed to him the undisclosed fact. *Speed v. Transamerica Corp.*, 99 F. Supp. 808, 829; *Kardon v. National Gypsum Co.*, 73 F. Supp. 798, 800 (E.D. Pa. 1947). To put the matter conversely, insiders are not required to search out details that presumably would not influence the person's judgment with whom they are dealing. *Kohler v. Kohler Co.*, *supra*, 319 F. 2d at 642. This test preserves the common law parallel between 'reliance' and 'materiality' under Rule 10b-5 solely by substituting the individual plaintiff for the reasonable man. Of course this test is not utterly dissimilar from the one hinted at by the Trial Court. That the outsider did not have in mind the negative of the fact undisclosed to him, or that he did not put his trust in the advice of the insider, would tend to prove that he would not have been influenced by the undisclosed fact even if the insider had disclosed it to him.

The 1st Circuit has also held that reliance is essential in a violation of Rule 10b-5. *Janigan v. Taylor*, 344 F. 2d 781 (1st Cir. 1965), *cert. denied*, 828 U.S. 879 (1965).

The defendant argues that the Court made no finding that the plaintiffs relied on the defendant's misrepresentations. Under any interpretation of the Act this is a necessary condition.

It is to be noted that clauses (1) and (3) of Rule 10b-5 make no reference to reliance. Clause (2), however, in addition to requiring that the misrepresentation or omission be material provides that it must be considered "in light of circumstances under which they were made, not misleading." These words indicate that reliance upon the misrepresentation is necessary to prove a violation of Rule 10b-5 and that the Court must review the misrepresentation in light of the circumstance under which they were made to determine whether or not they were misleading.

In the instant case the Trial Court found that:

In all transfers of the Ute Distribution Corporation stock made prior to August 27, 1964, the plaintiffs delivered an Offer to Sell, made in writing, to the Uintah and Ouray Agency of the Bureau of Indian Affairs at Fort Duchesne, Utah, for the purpose of offering said stock to the Ute Indian Tribe and its members. Each offer to sell set forth the number of shares to be sold and the amount the seller would accept for the stock. In each instance, the Offer to Sell was posted by Agency personnel in at least six public places on the Indian Reservation. None of these Offers to Sell was accepted by the Tribe or a member thereof. After the offers had been posted for a period of 30 days, the Superintendent of the Uintah and Ouray Agency sent a letter of notification to each person who had offered his stock for sale. The notification stated, in each instance, that no acceptance of the Offer to Sell had been made by the Ute Indian Tribe or a member thereof. It set forth the procedure to be followed under the regulations when the stock was to be sold to another person (A. 471-472).

The Court of Appeals considered the foregoing facts and determined that in light of the circumstances under which Gale misrepresented the prevailing market price, said misrepresentation was not misleading. The soundness of this decision is obvious. The price at which Gale purchased the UDC stock was

known to all who cared to observe for it was posted in at least six public places in Uintah and Duchesne Counties for a period of thirty days. It was in fact offered to any member of the Ute Indian Tribe or to the Ute Indian Tribe itself at the same price Gale was willing to pay, which offer could have been accepted by any one of the members of the Ute Indian Tribe. When the full blood Indians failed to accept the offer, Gale purchased the stock at the advertised price.

Gale purchased ten shares of UDC stock from two of the petitioners both of whom came to him and asked if he would buy their stock. There is no evidence that Gale pressured them to sell their stock or tried to take advantage of them.

Neither of the petitioners from whom Gale bought UDC stock relied upon the price Gale offered. Letha Harris Wopsock had independent knowledge of the value of the stock because she had sold two of her shares earlier to one Bill Hoopes for \$700 a share (A. 479). Mrs. Wopsock had talked to Mrs. Logan at the Uintah Ouray Agency who advised her that the stock had a value in excess of \$700 a share (A. 481). Yet, she sold four shares to Gale for \$350 a share and one share for \$400 (A. 479, 480).

Glen M. Reed asked Gale what he would pay for five shares of UDC stock. Gale told him he would pay him \$1,750. Mr. Reed said he needed a little more and so Gale told him to seek Nick Murray because he might give him a higher price for his stock. Reed testified that he thought the stock was worth \$500 a share but he decided to sell it to Gale for \$350 per share (A. 167-173).

It was upon these facts that the Court of Appeals found that there had been a material misrepresentation of the prevailing market price by Gale but no reliance upon the misrepresentation by petitioners.

Petitioners argue that the Court of Appeals "severely restricted" Rule 10b-5 by requiring some participation by Gale. It must be remembered that the facts surrounding each of the sales made by the petitioners reveal completely isolated factual settings. As to all other sales made by the petitioners, Gale merely notarized and guaranteed their signatures. He made no representations to them but only performed the requested service. In light of this, the Court of Appeals correctly held that:

The participation by the defendant Gale in the execution of documents as shown by the record in connection with these sales cannot constitute a breach of duty on his part to any of the plaintiffs (A. 584).

The scope of Rule 10b-5 does not extend to the point that the misstatement of the prevailing market price to one will permit a third person who was not even aware of the misstatement to recover damages. A. Bromberg, Securities Law: Fraud, S.E.C. Rule 10b-5 § 8.5 (1969). Yet the petitioners would have this Court extend the scope of Rule 10b-5 to this ridiculous limit by eliminating any causal connection between the misrepresentation and the damages. In support of their proposition, petitioners cite this Court's decision in *S.E.C. v. Capital Gains Research Bureau, Inc.* 374 U.S. 180 (1963). In that case this Court was reviewing a suit for a preliminary injunction not a suit for damages as in the instant case and it was upon this important distinction that this Court made its decision.

The conclusion, moreover is not in derogation of the common law of fraud, as the District Court and the majority of the Court of Appeals suggested. To the contrary, it finds supports in the process by which the Courts have adopted the common law of fraud to the commercial transactions of our society. It is true that at common law, intent and injury have been deemed essential elements in a damage suit between the parties to an arms-length transaction. *But this is not such an action. This is a suit for a preliminary injunction in which the*

relief sought is as the dissenting judges below characterized it, the "mild prophylactic" 306 F. 2d at 613, of requiring a fiduciary to disclose to his clients, not all his security holding but only his dealings in recommended securities just before and after the issuance of his recommendations.

The content of common-law fraud has not remained static as the Courts below seem to have assumed. It has varied, for example, with the nature of the relief sought, the relationship between the parties, and the merchandise in issue. *It is not necessary in a suit for equitable or prophylactic relief to establish all the elements required in a suit for monetary damages.* (Emphasis added)

The instant case is not a class action under Rule 23 of the Federal Rules of Civil Procedure but is a case involving permissive joinder of parties under Rule 20 (a) (A 4). Accordingly, each of the petitioners must prove a separate cause of action against the respondents. If one of the petitioners proves his case, that is not sufficient to permit all of the petitioners to recover damages. The facts and the law do not justify petitioners' contention that Gale is jointly and severally liable to all who sold UDC stock when Gale dealt with only two of the twelve petitioners.

The petitioners argue that the Court of Appeals was in error by not finding that Rule 10b-5 had been violated by Gale because the Bank withheld from petitioners the stock certificates which bore on their face a printed "Warning" (Ex. 101, A. 106). The stock certificates were retained by the Bank for safekeeping, a decision which Gale did not make and had absolutely no authority to change (A. 512).

The Court of Appeals was cognizant of the findings of the Trial Court on this point which findings were as follows:

First Security Bank took the position, at all times

prior to August 27, 1964, that it was entitled to keep and retain the Ute Distribution Corporation stock certificate owned by all of the mixed-bloods and did so until they were transferred or until August 27, 1964. The proof is insufficient to show that this in and of itself was the direct cause of damage in any particular case and the evidence indicates that the retention system was established in good faith for convenience and in the supposed interest of the Indians; but it did minimize the dissemination of warnings against the disposal of stock and encourage acquisitions of stock from half-bloods without the 'warnings' being impressed upon them (A. 516).

While petitioners contend that the Court of Appeals erred in following these findings of fact, they have not presented any evidence nor given any reason to show error was committed.

(3) Petitioners Failed to Prove a Fraudulent Course of Business

Petitioners contend that clause (3) of Rule 10b-5 was violated by Gale notarizing false affidavits, Gale's abuse of inside information, and because Gale was an unregistered broker.

Nothing more needs to be said regarding the contention that Clause (3) was violated by "notarizing false affidavits" than was said by Judge Seth in the decision of the Court of Appeals:

It would appear that the Trial Court places considerable reliance in reaching its conclusion on the asserted inaccuracies in the affidavits executed by the plaintiffs concerning their ultimate sales of the shares. However, the bank or the Government had no duty as to these plaintiffs to see that they executed affidavits that reflected the true transaction. Furthermore, the affidavits were executed in connection with the right of refusal in which, as indicated above, the defendants had no interest. It is difficult to see how they can complain of inaccuracies in their own affidavits (A. 583).

Petitioners' claim that Gale abused inside information is simply not supported by the evidence. The Trial Court found that Gale had "inside information . . . beyond that generally available to the plaintiffs" but it is difficult to tell from the findings whether the "inside information" was regarding the corporations, affairs or the personal financial records of the stockholders of UDC (App. 521). Be that as it may, the Trial Court did not find that Gale used the "inside information" he had to deprive or cheat any of the petitioners. Rule 10b-5 was designed to prevent those having inside information from taking advantage of minority stockholders, which Gale did not do. See *Speed v. Transamerica Corporation* 99 F. Supp. 808, 828, 829 (D. Del. 1945), aff'd, 235 F. 2d 369 (3rd Cir. 1956).

The final argument that clause (3) of Rule 10b-5 was violated is based upon the assumption that Gale was an unregistered broker. It is argued that Gale should be liable under Rule 10b-5 because if he had been a registered broker his actions would have violated § 15 (c) (1) of the Security and Exchange Act of 1934, 15 U.S.C. § 78o (c) (1) (1964), and the regulations thereunder.

Does the purchase of ten shares of stock from two of the people and the reselling of eight shares to two people make Gale an unregistered broker? This is an issue which was never considered by either the Trial Court or the Court of Appeals and cannot be considered for the first time in this appeal.

It should also be noted that contrary to the position of petitioners, the term "broker" as defined in the Securities and Exchange Act of 1934, Section 3(a) (4), excludes banks, 15 U.S.C. 78c (a) (4) (1964).

II

THE MEASURE OF DAMAGES IN A CIVIL ACTION FOR VIOLATION OF RULE 10b-5

There are relatively few cases which have reached the issue of damages for violation of Rule 10b-5. Most of the courts that have awarded damages have used the constructive trust approach which permits the seller to recover whatever profits the buyer realized on the resale of the stock. See *Kardon v. National Gypsum Co.*, 73 F. Supp. 798 (E. D. Pa. 1947); *Speed v. Transamerica Corp.*, 135 F. Supp. 176 (N. Del. 1955), *aff'd* with modification as to interest, 235 F. 2d 369 (3rd Cir. 1956); *Janigan v. Taylor*, 344 F. 2d 781, 786 (1st Cir. 1965), *cert. denied*, 382 U.S. 879 (1965).

The Court of Appeals acknowledged the prevailing market value of the UDC stock and followed the constructive trust approach:

The measure of damages has been referred to above briefly. We hold that the trial court was in error in using the value of \$1500 per share in the computation of damages as the evidence does not support such a figure. Also the evidence does not support the finding that the market price was depressed by the defendants. As to the cross-appeals, the evidence as to greater values was entirely speculative, as the trial court concluded.

The measure of damages for breaches of duty under regulation 10b-5 is the profit made by the defendant on resale of stock purchased from the plaintiffs. If no resale was made or if the resale was not at arms length, then the measure is the prevailing market price at the time of the purchase from the plaintiffs (A. 587).

Section 28(a) of the Securities and Exchange Act of 1934, 15 U.S.C. Sec. 78bb(a) limits recovery in a civil action to "ac-

tual damages." The Court of Appeals in *Estate Counseling Service v. Merrill Lynch Pierce etc.*, 303 F. 2d 527 (10th Cir. 1962) defined actual damages as follows:

"The failure to show actual damages is also a fatal defect in the cause of action based on the Securities Act of 1934, 15 U.S.C.A. 78a, et seq. That act permits recovery of his actual damages on account of the act complained of. "Actual damages," under the federal rule of damages for fraud is the "out of pocket rule." In the federal courts the measure of damages recoverable by one who through fraud or misrepresentation has been induced to purchase bonds of corporation stock is the difference between the contract price, or the price paid, and the real or actual value at the date of the sale, together with such outlays as are attributable to the defendant's conduct. Or, in other words, the difference between the amount parted with and the value of the thing received. (Cases cited by the Court have been omitted.)

The Seventh Circuit in *Kohler v. Kohler Co.* 208 F. Supp. 808 (E. D. Wis. 1962), *aff'd*, 319 F. 2d 635 (1963) ruled that the measure of damages under Rule 10b-5 was the difference between the price received by the plaintiff and the real or actual value of the stock at the date of the sale.

In the instant case the Trial Court found that from 1963 to 1965 UDC stock was being sold at prices ranging from \$300 to \$700 per share (A. 529) but then ruled that the reasonable and fair value of the stock during that period was \$1500 per share (A. 537).

There is no evidence to support the finding of the Trial Court that the market price was \$1500 per share. To the contrary the evidence clearly shows that Gale, whom the Trial Court found to have "inside information", received a maximum of \$530 per share. To allow petitioners to recover \$1500 a share

places them in a better position than they would have been if the alleged violation of Rule 10b-5 had not occurred.

Inasmuch as the record fails to show a market value in excess of \$700 per share for UDC stock, to award petitioners damages based on a \$1500 per share figure as urged by petitioners would allow punitive damages to be affixed against Gale contrary to 15 USC Sec. 78bb(a), *Myzel v. Fields*, 386 F. 2d 718, 748 (8th Cir. 1967); *Meisel v. North Jersey Trust Co. of Ridgewood*, N.J., 216 F. Supp. 469 (S.D.N.Y. 1963), or permit petitioners to recover the "expectant fruits of an unrealized speculation" contrary to the decision of this Court in *Smtith v. Bolles*, 132 U.S. 125, 130 (1889).

The Trial Court ruled that the market value of the UDC stock had been influenced by Gale, Haslem and the Government (A. 529). It is difficult to understand this ruling in light of the finding that Gale and Haslem had only purchased 8-1/3% of the shares of UDC stock which was sold during the period in question. The balance, 91-2/3%, was purchased by 32 other individuals (A. 523).

No evidence was introduced at the trial which established the market value of the stock at \$1500 per share, however, the Trial Court arbitrarily placed a value of \$1500 on each share. This value was properly rejected by the Court of Appeals because the record contained nothing to support it.

The petitioners cite the following eminent domain cases in support of the \$1500 valuation: *United States v. Silver Queen Mining Co.*, 285 F. 2d 506 (10th Cir. 1960), *United States v. Sowards*, 339 F. 2d 401 (10th Cir. 1964) and *Montana Railway Co. v. Warren*, 137 U.S. 348, 352 (1890). These cases give no support to the ruling of the Trial Court for under the law of eminent domain the value is "the equivalent of the fair market value of the property measured by what a willing buyer would

pay to a willing seller when neither is acting under compulsion.”
United States v. Silver Queen Mining Co., *supra*.

The value of \$28,000 urged by the petitioners as the asset value of the UDC stock is so speculative that neither the Trial Court nor the Court of Appeals considered it. Its speculative nature is illustrated by the testimony of the petitioners' own expert witness that the “oil shale isn't worth four cents — until the process has been developed economically, and it will take millions of dollars to do this.” Yet, petitioners contend that this same oil shale has a value of \$414,150,000 (A. 375).

As was stated in *United States v. Bolles*, *supra*, damages do not include “the expectant fruits of an unrealized speculation.”

CONCLUSION

The questions presented in this case relating to Rule 10b-5 are of first impression to this Court, however, the unanimous decision of the Court of Appeals on these questions is in harmony with the large body of case law that has developed in the area of Rule 10b-5 over the past 25 years.

In reaching its decision the Court of Appeals correctly analyzed the facts and decided that the performance of ministerial services is not participation in sales transactions and, therefore, not a violation of Rule 10b-5. It also established that unless there is reliance upon a misrepresentation of a material fact and a causal relation between the misrepresentation and the damages claimed there can be no recovery. Further, the decision correctly upholds 15 U.S.C. § 78bb (a) which limits damages to the amount actually suffered and refuses to allow a person to be placed in a better position than if the law had not been violated.

In light of the foregoing, Gale urges that the decision of the Court of Appeals be affirmed by this Court.

Respectfully submitted,

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**In the
Supreme Court of the United States**

No. 70-78

**AFFILIATED UTE CITIZENS OF THE STATE OF
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- vs. -

UNITED STATES OF AMERICA,

Respondents.

ANITA REYOS, et al,

Petitioners,

- vs. -

**FIRST SECURITY BANK OF UTAH, N.A., UNITED
STATES OF AMERICA, JOHN B. GALE and
VERL HASLEM,**

Respondents.

BRIEF FOR RESPONDENT VERL HASLEM

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STATES OF AMERICA, JOHN B. GALE and
VERL HASLEM,**

Respondents.

BRIEF FOR RESPONDENT VERL HASLEM

QUESTIONS PRESENTED

Respondent Verl Haslem, being dissatisfied with the "Questions Presented" by petitioners, and pursuant to Rule 40, paragraph 3, of the Rules of the Supreme Court of the United States, herewith sets forth a revised set of "Questions Presented." However, since this respondent is not concerned with several of the issues raised in these proceedings, the issues enunciated will only be those to which this brief is addressed.

1. Was the Court of Appeals correct in requiring each plaintiff herein, individually, to prove a cause of

action and damages before being entitled to recover, and as a part thereof:

(a) Was the Court of Appeals correct in holding that a bank, which had contracted to act as transfer agent, depository and bookkeeper for a corporation formed to hold assets belonging to mixed blood Indians, acquired no additional duties of a quasi fiduciary nature to the stockholders of that corporation, all of whom were mixed blood Indians.

(b) Was the Court of Appeals correct in holding that an employee of a bank such as the one described in Question 1.(a), above, is not clothed with the duties of his employer of which he has no knowledge so as to subject him to personal liability for a breach thereof.

(c) Was the Court of Appeals correct in holding that the individual defendants did not have sufficient connection with most of the transactions to subject them to personal liability for damages resulting therefrom.

2. What are the legal elements necessary to prove a cause of action in a suit for money damages under §10(b) of the Securities Exchange Act of 1934 (15 USC §78j(b)) and Rule 10b-5 of the Securities and Exchange Commission (17 C.F.R. 240.10b-5).

3. What is the measure of damages for recovery by a seller of securities who has suffered a loss as the result of a violation of §10(b) and Rule 10b-5.

STATEMENT OF THE CASE

This brief is submitted on behalf of respondent Verl Haslem in response to the brief of petitioners, Affiliated Ute Citizens of the State of Utah and Anita Reyes, et al.

The petitioners have joined together for purposes of this review two separate and distinct cases, only one of which pertains to Haslem. The first case, *Affiliated Ute Citizens of the State of Utah v. the United States of America*, 431 F.2d 1349 (1970) (herein "the AUC case") seeks the remedy of having certain properties distributed pro rata to the individual mixed blood members of the Ute Indian Tribe rather than to a corporation formed to receive it. The second case, *Anita Reyos, et al v. First Security Bank of Utah, N.A., the United States of America, John B. Gale and Verl Haslem*, 431 F.2d 1337 (1970). (herein "the Reyos case") claims damages on behalf of certain enumerated mixed bloods. The latter case is divided into three claims: the first is a claim against the United States under the federal Tort Claims Act (28 U.S.C., §1346(b)) by which petitioners allege that the government negligently failed to protect the mixed bloods in breach of an alleged duty to do so; the second is a claim against the bank for breach of an alleged fiduciary relationship; and the third consists of claims against the bank, Haslem and Gale based upon an alleged violation of Sec. 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. §78j(b)) (herein "§10(b)") and Rule 10b-5, promulgated thereunder by the Securities and Exchange Commission (17 CFR 240.10b-5) (herein "Rule 10b-5").

Haslem takes no position with respect to the first case, nor with respect to the first claim against the United States in the second case. Except to assert that the Court may not clothe him with responsibility therefor, Haslem only incidentally argues the merits of the second claim in the second case. The substance of this brief will be addressed to the claims against Haslem based upon the claimed violations of §10(b) and Rule 10b-5.

At the outset, it should be pointed out that petitioners' Statement of the Case contains a number of inaccuracies, particularly in the form of general statements which do not apply to Haslem. These errors are carried over into the Argument portion of the petitioner's brief and are amplified, so that the conclusions reached by petitioners are substantially weakened when viewed in the light of true facts as revealed by the Record herein.

Thus, at the risk of redundancy, the facts pertaining to Haslem, and some of the inaccuracies of Petitioners' brief, will be set forth here.

This case involves an attempt by eight-five, "mixed blood" members of the Ute Indian Tribe to recover damages for the alleged wrongful activities of the defendants which, the petitioners claim, resulted in their receiving less than full value for their shares of stock in the Ute Distribution Corporation. The case before the Court actually involves only twelve of the eighty-five named plaintiffs, the twelve being so-called "bellwether" plaintiffs (A. 19).

Th eighty-five "mixed blood" members of the Ute Indian Tribe sued on two counts. The first count, which asked for relief only as against the defendants First Security Bank of Utah, N.A., John B. Gale and Verl Haslem, was based upon a claimed violation of §10(b) and Rule 10b-5. The second count, which asked for relief only as against the Bank and the United States of America, claimed that these defendants were negligent in discharging their statutory, contractual and quasi-fiduciary duty to the plaintiffs (A. 17).

For ease of reference, First Security Bank of Utah is sometimes herein referred to as "First Security," or "Bank," the defendant United States of America is re-

ferred to as "the U.S." or "the Government," and the Securities Exchange Act of 1934 is referred to as the "'34 Act."

It is of some significance, as later noted herein, that the case was initiated as a class action under Rule 23, Fed. R. Civ.P. (R. 1); however, as the case was finally postured in the Third Amended Complaint and the Pre-Trial Order, the class action theory was abandoned and the case was brought under the joinder provisions of Rule 20, Fed.R.Civ.P. (R. 369, 500).

Because of the many plaintiffs and the varying fact situations affecting each one, it was determined that only twelve "bellwether" plaintiffs' cases would be tried initially (Pre-Trial Order, A. 19), with the expectation that the decision would be appealed before the balance of the cases were tried (Tr. 1216-1218).¹ Consequently, this appeal involves only those twelve bellwether plaintiffs.

The litigation arose out of the sale by the plaintiffs of their stock in the Ute Distribution Corporation (herein sometimes "UDC"), a Utah corporation formed for the purposes and under the circumstances hereafter outlined. In 1954, Congress passed Public Law 671 (25 U.S.C. §§677-677aa), terminating the responsibility of the United States for rendering certain services to the mixed blood members of the Ute Indian Tribe. After the termination date specified therein, the mixed bloods became subject to the laws of the U.S. and the various states in which they resided.

¹In numbering the pages of the Record, the Clerk of the District Court for the District of Utah numbered all pleadings and exhibits in Volumes I through X as Record pages 1 through 1971, and numbered the trial transcript in Volumes XI through XVIII as Transcript pages 1 through 1223. Accordingly, whenever the portion of the record referred to has not been reproduced in the Appendix, the designation "R." will be used to mean pages from the first ten volumes, and the designation "Tr." will be used to designate pages in Volumes XI through XVIII. Citations to the Appendix follow the practice adopted by Petitioners.

Public Law 671 called for the partition and distribution of the assets of the Ute Tribe between the Tribe and the mixed bloods. Certain of those assets were not susceptible of actual partition and distribution, such as the mixed bloods' undivided interests in claims against the U.S. and in possible mineral interests in the Tribal lands. Accordingly, Ute Distribution Corporation was formed into which all such assets belonging to the mixed bloods were transferred. At the time of the formation of UDC, there were 490 mixed bloods on the rolls of the Bureau of Indian Affairs, and each received ten shares of the company.

The date the Government's responsibility for the mixed bloods terminated was August 27, 1961, but the Articles of Incorporation of UDC, which were approved by the U.S. Department of the Interior, provided that there could be no sale of the stock of UDC prior to August 27, 1964, unless the shares were first offered to the Ute Tribe and its members. If the offer was not accepted by any of the offerees, then the mixed blood could sell his shares to anyone he desired, but only for an amount, and on terms, equal to or better than those for which the shares had been previously offered. After August 27, 1964, the requirement of a prior offer expired and the mixed bloods were then free to trade their shares to anyone they saw fit and for any price which was acceptable to them (Ex. 16A, E. 6).

Both the Government and the officers and directors of UDC believed that certain services should be rendered by a bank or trust company, and as a result, certain agreements were entered into between First Security and UDC by virtue of which the Bank became the depository and transfer agent for the company and its bookkeeper, in effect (Ex. 18, E. 13-15). The Bank also

became a trustee for some of the mixed bloods under an express Trust Agreement (Exs. 17-A, 17-B, R. 1380-1400). Most of the beneficiaries of the trust were minors, although eleven adults who "were in need of assistance in the conduct of their affairs" were also beneficiaries. The determination as to who fell into that category was made by the Secretary of Interior (A. 411). The defendant Haslem had nothing to do with the negotiations or conferences concerning the drafting, implementation or approval of any of these agreements. After the agreements were executed by the parties, the Bank and UDC together decided on a manner for implementing the methods for transferring the stock, making the prior offer to the Tribe and its members, and seeing to it that the transfers could be consummated (Tr. 565-615, A. 274-300).

The procedure decided upon was as follows:

1. At such time as a mixed blood decided to sell his stock, he was required to execute an offer of sale to the Tribe at a specific price per share and a form was provided for this purpose (Ex. 50, E. 37). Haslem had nothing to do with the preparation of this form (A. 206-209).

2. After the form of offer had been posted in a manner agreed to between the Bank, the Government and the UDC for a period of thirty days and there was no acceptance thereof, the mixed blood could sell his shares to anyone he desired on the same or better terms as set forth in the posted offer. Neither the Tribe nor any of its members ever purchased any shares offered by a mixed blood (A. 253-4).

3. When the mixed blood had arranged the sale of his shares, he was required to sign an affidavit in which

he specified the amount he received for his shares and the name of the person who purchased them. The form of the affidavit (Ex. 72-A, E. 97) was agreed to by the Government and the UDC. Haslem had no hand in preparing this form.

Steps 1 through 3, above, did not apply after August 27, 1964, and mixed bloods could then sell their stock without the right of first refusal in the Tribe or its members. (A. 207-8, Ex. 16A, E. 142).

4. At the suggestion of the attorney for the UDC, the Bank, the Government and the UDC agreed that the Bank should retain all of the UDC stock certificates in its office at Salt Lake City. The actual assignment of the shares was accomplished by means of a stock power on a form commonly used (A. 288). Haslem took no part in the decision to handle the stock transactions in this manner.

5. The affidavit and the stock power, once executed, were then submitted to the Superintendent of the Ute and Ouray Reservation (hereinafter referred to as the "Superintendent"), who issued his certificate (Ex. 50, E. 37) that the law respecting the transfer of the shares had been complied with and that the shares could then be transferred on the books of the corporation to the new owner (A. 207). Haslem took no part in preparing the form of certificate (A. 207-228).

6. The Bank then caused new stock certificates to be made out in the name of the new owner and submitted them to the office of the UDC for the signatures of the president and secretary and to have the corporate seal placed on the certificates. The certificates were then delivered to the new owners (A. 298).

First Security had an office in the town of Roosevelt, Duchesne County, Utah, and this office was used by the mixed bloods to conduct much of their business in connection with the transfer of the UDC stock. Haslem was one of two assistant managers at the Roosevelt office and as such performed some services to aid the mixed bloods in some of the transfers of their stock (A. 276). His activities will be more fully discussed. No one from the bank ever discussed any trust or fiduciary duties with Haslem except as to express trust accounts (A. 287, 460-61).

During the period involved in this litigation, mixed bloods sold 1,387 shares of their stock in UDC. Of these shares fifty were purchased by Haslem, all of which were purchased after August 27, 1964, when there was no requirement that the shares first be offered to the Tribe. Gale purchased 63 shares, some before and some after August 27, 1964 (A. 523). Attached hereto as Appendix "A" is a schedule showing in summary form each transaction involving the twelve bellwether plaintiffs taken from the Trial Court's Findings of Fact (A. 474-499). It shows that Haslem purchased only six of the 122 shares sold by the twelve bellwether plaintiffs, and for those six he paid cash. Since his shares were all purchased after August 27, 1964, there were no posting or affidavit requirements nor was it necessary to obtain a certificate from the Superintendent.

Haslem was a notary public and was also authorized to guarantee the signature of persons whom he knew on stock certificates and stock powers. If he received any fees for notarizing documents, the fees went to the Bank (A. 462). There is no evidence that Haslem worked in concert with any other defendant in his dealings in the UDC stock. Virtually all of the evidence presented con-

cerning transactions in which Haslem was involved (other than as a purchaser, either for himself or for others) indicates that he only performed ministerial duties in the course of his employment and pursuant to his employer's instructions.

The Trial Court determined that Haslem and Gale devised a "plan of [sic] scheme" to obtain UDC stock from mixed bloods and to "aid and abet" others in acquiring such stock for their own profit and for the profit of others (A. 527). Prior to so finding, however, the Trial Court had specifically found that in the great bulk of the transactions here involved neither the Bank, Gale nor Haslem had anything to do with the negotiations concerning them and received nothing from them (A. 474-499). (See Appendix "A" to this Brief.)

Nevertheless, the Trial Court found that the Bank, Haslem and Gale had collectively violated certain fiduciary duties as well as duties of disclosure to the plaintiffs (A. 534-535). Because of this finding, the Trial Court held the Bank, Haslem and Gale jointly and severally liable to *all* the twelve bellwether plaintiffs for violation of §10(b) of the '34 Act and Rule 10b-5, notwithstanding Haslem's lack of involvement in all but two of the thirty-two transactions.

The Trial Court then determined the "true value" of the shares sold by the plaintiffs on the date of each sale as \$1,500 and measured the damages by the difference between that figure and the selling price for each share.

The result was a judgment in favor of the twelve bellwether plaintiffs and against the Bank, Gale and Haslem, jointly and severally, for \$129,519.56.

Haslem, Gale and the Bank (and the United States) appealed the decision. The Court of Appeals ruled that the United States had no duty to the mixed bloods under the Termination Act which it had breached and reversed the judgment against the government under the Tort Claims Act. The Court of Appeals further ruled that the agreements between the Bank and the UDC created no duty to discourage sales of stock or any "quasi-fiduciary" duty to the individual mixed bloods and since no duty was created, none was breached. Contrary to the assertion in petitioners' brief (p. 5) that the Court of Appeals ruled "... that the Bank and its officers had not violated Rule 10b-5," the Court of Appeals indicated that such a violation may have occurred, but the record was not sufficiently clear to support a judgment based thereon (431 F.2d at 1345 *et seq.*). The Court of Appeals indicated (p. 1347) that there were misrepresentations in some instances as to the prevailing price at which shares could be sold and that if the shares purchased were immediately resold at a higher price, these were misrepresentations of material facts. But the Court of Appeal's decision limits the liability of defendants Gale and Haslem to those transactions in which they were involved as a principal, ruling that in those instances where one of them acted solely as a notary public or a signature guarantor, or both, without more, there was not sufficient involvement to justify imposing liability. With respect to any misrepresentations made by the defendants, or any of them, the Court of Appeals ruled that in order to recover therefor the plaintiffs involved would have to show reliance and the causal connection between the particular defendant's act and the particular plaintiff's loss.

In addition, the Court of Appeals held that there was nothing in the record to support the Trial Court's

finding of a conspiracy, plan or scheme to violate any duties owed to the plaintiffs by any of the defendants (431 F.2d at 1348) and so the individual defendants, as well as the Bank, could not be held liable for sales of stock by mixed bloods in which sales they did not participate.

The Court of Appeals also ruled that the measure of damages in those cases where Rule 10b-5 had been violated was the difference between the market value of the shares or the price at which they were resold and the price paid therefor. The measure adopted by the Trial Court was held improper.

Certain "facts" described in petitioners' brief require clarification:

1. At page 9 of their brief the petitioners state that the BIA established the Bank as transfer agent and to assist the UDC as "business agent," citing a conclusion to this effect in the Findings of Fact (Pet. Brief, p. 9). The agreement referred to is set forth in the Exhibit booklet on pages 13 to 15. Petitioners' characterization of the Bank as "business agent" is misleading. Actually, the agreement provided that the Bank would act as transfer agent for UDC, as a depository of its funds, as a bookkeeper for it and would perform such other duties as UDC requested. There was nothing in the agreement to indicate that the Bank would perform any advisory functions nor that it would assume any of the "quasi-fiduciary" duties which petitioners contend were assumed by the Bank. The agreement did not make the Bank a general fiduciary with respect to the mixed bloods.

2. On page 10 of petitioners' brief it is said that the "officers" of the Bank at its Roosevelt office "arranged for agents, usually used car dealers, who contacted the

Indians during periods of economic crisis, sometimes contrived . . . and sometimes already existent . . ." presumably to purchase stock. There is no evidence in the record that the defendant Haslem ever engaged in any such activities, or that he knew that such activities were engaged in, if they were.

3. At page 10 of their brief, petitioners state that "[S]uch market as ever existed for the UDC stock was largely maintained by the Bank officers for their out of state clients, at prices fixed by the Bank officers in Roosevelt and at its central office in Salt Lake City." On the contrary, the record indicates that most of the transactions involving the bellwether plaintiffs before the court were with persons living within the state of Utah (A. 474-499). Haslem was only involved in two of the thirty-three transactions whereby the bellwether plaintiffs sold their stock and he purchased only six of 122 shares sold by said plaintiffs. Haslem never maintained a market nor did Haslem, Gale or the Bank maintain a market. As indicated above, of the 1,387 shares of UDC stock sold, Haslem purchased fifty and Gale purchased sixty-three. Thus they were involved in less than 10% of the total transfers of shares.

4. The record does not indicate anywhere that in the few instances where Haslem acted as a notary public or guaranteed signatures that he had any knowledge concerning any irregularities connected with the transaction. In fact, with respect to the twelve bellwether plaintiffs, Haslem only notarized one affidavit in a transaction which involved the sale of five shares to one Wallace A. Davis by Stewart Eugene Reed (A. 495-6). The trial court expressly found that Haslem did not participate in the sales negotiations, received nothing from the sale and that there was no evidence that the seller re-

ceived less than the value for which he bargained (A. 496).

SUMMARY OF ARGUMENT

1. The Court of Appeals properly held that each plaintiff should be required to establish his cause of action individually against each defendant, reversing the holding of the trial court that *all* defendants were liable to all plaintiffs. Petitioners' attempt to reintroduce the confusion attendant at trial should not be allowed.

(a) The trial court seemed to treat the case as a class action under Rule 23, Fed.R.Civ.P., when in fact the case proceeded under the joinder provisions of Rule 20(a), Fed.R.Civ.P. This latter rule allows the trial court to try cases having similar factual situations as one case, but to give judgment in favor of plaintiffs according to their respective rights to relief and against one or more defendants according to their respective liabilities. The Court of Appeals, in accord with that distinction, rejected the trial court's findings and directed the court in any further proceedings to allow a plaintiff to establish his claim against the defendants. That disposition should be affirmed.

(b) Haslem did not engage in most of the activities upon which petitioners rely to establish liability, and so he cannot be held liable in those transactions in which he did not participate. No duty was imposed upon him solely by virtue of his employment by the Bank and he cannot be held liable on a peculiar theory of "respondeat-inferior."

(c) Regardless of whether this Court holds that a plaintiff need not be a purchaser or a seller or in privity of contract with the defendant in order to recover in a Rule 10b-5 action, a defendant must still be "directly

or indirectly" involved before he may be deemed liable and therefore must have sufficient "nexus" with the operative facts giving rise to liability. Haslem did not have the required nexus to be considered to have "directly or indirectly" participated in thirty of the thirty-two transactions involving the twelve bellwether plaintiffs and should not be held responsible therefor.

2. The Court of Appeals held that in any further proceedings the remaining plaintiffs should each be required to prove reliance and causation before being entitled to recover. Petitioners suggest that these elements should be eliminated as a requirement in suits brought under §10(b) and Rule 10b-5. However, these elements have been and should remain a limiting factor on a plaintiff's right of recovery for damages under Rule 10b-5. In those cases where it is difficult, if not impossible, to prove reliance, the very materiality of the fact involved may presume reliance, in which case materiality and reliance can be deemed to have merged. But in those cases where reliance ought to be shown, particularly in damage actions, there is no need to eliminate it. That is particularly true in this case.

3. The measure of damages to be applied in those instances where the trial court determines that §10(b) and Rule 10b-5 have been violated was fairly stated by the Court of Appeals to be the profit made by the defendant upon resale of the shares purchased from a given plaintiff or, if the resale was not at arms length, the difference between the purchase price and the prevailing market at the time of the purchase. The petitioners' attempt to value the shares based upon their version of the value of the underlying assets of UDC is so speculative that it must be disregarded. Also, the evidence simply does not support the proposition that the defendants'

activities, and particularly Haslem's activities, had any effect on the market whatsoever, and certainly not a depressant effect. Upon remand, the trial court should be instructed to apply the measure of damages enunciated by the Court of Appeals.

ARGUMENT

POINT I.

THE COURT OF APPEALS WAS CORRECT IN REQUIRING THAT EACH TRANSACTION BE EXAMINED TO DETERMINE WHICH DEFENDANT, IF ANY, CAUSED DAMAGE TO EACH PLAINTIFF INVOLVED AND THE EXTENT OF HIS OR ITS LIABILITY THEREFOR.

A. The Court of Appeals Rectified the Procedural Confusion of this Case, Which Began as a Class Action Under Rule 23, Fed.R.Civ.P. But Ultimately Proceeded Under the Provisions of Rule 20(a), Fed.R.Civ.P., Which Governs Permissive Joinder of Parties. Petitioners Seek to Reintroduce the Confusion.

Petitioners began this case as a class action under Rule 23, Fed.R.Civ.P. (R. 1-4). Its final posture, however, was not as a class action but as a series of claims joined together for trial under the provisions of Rule 20(a), Fed.R.Civ.P. (A. 369; A. 4). It appears that the resulting change left a residuum of confusion in the Trial Judge's mind, as the result of which he found the Bank, Haslem and Gale liable as to *all* transactions, when they were not even involved in many of them.

The confusion of the Trial Court may be partly explained when it is recalled that early law required a plaintiff to allege and prove a "joint tort" in order to join parties as defendants, because it was a necessary prerequisite to joinder that all defendants be liable for

the entire amount of any judgment entered. This rule was later broadened to include those situations where harm was created as a result of independent, separate, but concurring tortious acts of two or more persons even though such acts were probably not truly "joint torts," because the Court could impose joint and several liability for the damage caused by those wrongs. 1 Harper & James, Torts (1956), pp. 692-697. This commentator notes that it must be remembered that to have a truly "joint tort," the harm caused must be of an *indivisible* nature which is not practicably *apportionable*. Thus, in early law, the finding of liability against one joined defendant meant liability for all, by definition. As stated in 1 Harper & James, at page 695:

The joint and several liability imposed on joint tort-feasors, or independent concurring tort-feasors producing an indivisible injury is a 'substantive liability' to pay entire damages. *This differs from what may be described as a 'procedural liability' to be joined with other tort-feasors as defendants in a single action. An understanding of this distinction between the two concepts, and a recognition that one should not necessarily control or regulate the other but that each should be applied independently according to the facts of a case, is essential to a full grasp of the meaning of both and their relationship to each other. [Emphasis supplied.]*

Later procedural codes, particularly the present day Federal Rules of Civil Procedure, recognized that while defendants may be joined together for procedural expediency, such joinder does not require common judgments against all defendants so joined. As stated in the last sentence of Rule 20(a):

Judgments may be given for one or more of the plaintiffs according to their respective rights

to relief, and against one or more defendants according to their respective liabilities.

So, as the Court of Appeals recognized, the claim of each plaintiff must be examined to determine which of the named defendants, if any, caused his damage, if any, which resulted from the sale of his stock.

Petitioners, in their brief, seek to gloss over and blur the activities of the Bank and the individual defendants so as to make it appear that all of the defendants are responsible for all of the operative facts which petitioners claim justifies finding liability. A closer examination of the record indicates that petitioners' claims are too ambitious.

B. Most of the Claimed Violations Arose From Transactions With Which Haslem Had No Connection, and He Cannot Be Held Liable Therefor.

Petitioners contend in Point I of their Argument that "the conduct of the bank and its officers violated Rule 10b-5." In the discussion which follows, the petitioners describe the "misconduct of the Bank and its officers" without so much as a nod in the direction of the problem of which individual was responsible for what conduct. The "misconduct" ascribed by petitioners to the defendants involves a number of activities summarized on pages 14-17 of petitioners' brief. However, Haslem, as the record reveals, had nothing to do with the following activities relied on by petitioners:

1. Devising the affidavit by which the Superintendent was advised that a mixed-blood's offer had not been accepted by the Tribe or its members.
2. The negotiation or execution of any contracts the Bank had with UDC.

3. Assuring the corporation (UDC) that the consideration received by the Indians was cash when it was not.

4. Circumventing the requirement (if there was one) that the Indians receive cash.

5. Withholding stock certificates from the mixed bloods.

6. Engaging in so-called "market-making" activities. (Haslem's activities, involving the purchase of fifty shares out of a total of 1,387 sold by the mixed bloods, could not be construed as a market-making operation, nor could the activities of Haslem and Gale combined. Together they purchased 8-1/3% of the stock sold by the mixed bloods. See *Chasins v. Smith, Barney & Co.*, 438 F.2d, 1167 at 1170, n. 4 (2d Cir., 1970) re definition of a market maker. It is difficult to see how Haslem could have affected the market price of UDC stock. There is no evidence that Haslem acted in concert with Gale, but even together they could not be considered "market-makers."

7. Any arrangements with used car dealers or anyone else to circumvent the government regulations.

8. Performing "significant steps" in implementing each of the "nonprincipal" sales. This contention appears to arise out of the fact that Gale and Haslem occasionally acted as notaries public on affidavits signed by the mixed bloods or guaranteed their signatures upon the transfer of their shares. Haslem did very little of this. Of the thirty-two transactions involving the twelve bellwether plaintiffs, Haslem had no connection, either direct or incidental, with twenty-five of them. In five of the other seven transactions, Haslem's sole connection was either as a guarantor of the signature of the seller (four in-

stances) or as both notary public and signature guarantor (one instance). (See Appendix "A" hereto.)

When the petitioners assert that the Bank and its officers notarized affidavits "known to be false," they speak too broadly, as the record does not reveal any instance where Haslem notarized an affidavit which he knew to be false. In the only transaction involving the twelve bellwether plaintiffs where Haslem acted as a notary public, the trial court expressly found that Haslem took no part in the negotiations or sale except as a notary public and a signature guarantor and received nothing from the transaction. The trial court further expressly found that the consideration given for the shares purchased appeared to be of fair value (A. 496).

But petitioners are not content to rely on the acts of Haslem to determine the liability of Haslem; they seek to hold him responsible to *all* of the plaintiffs. To do so (or even to hold him responsible for *some* of the transactions) they appear to apply some sort of doctrine which might be termed "respondeat-inferior." They seek to attribute to Haslem duties to the mixed bloods which they claim the Bank owed, but about which Haslem knew nothing (A. 523).

In this connection, it has become fairly well established that if a servant commits a tort within the scope of his employment, the master may be held vicariously liable. However, if the master commits a tort without the knowledge or consent of the servant, the servant is not thereby deemed vicariously liable. *Kotzman v. Condit*, 169 Okla. 422, 37 P.2d 412, 98 A.L.R. 290 (1934); see 1 Harper & James, Torts, 700, n. 53 (1956):

But of course the servant or agent is not liable for the tortious acts of the master or principal,

except when other principles of joint tort liability would make him so. This failure to impose joint and several liability, or in fact, any liability, where the tort is the master's alone, indicates once more that the liability relationships are not truly joint torts. Only in the case of common enterprises would the individually consummated tort of either party bind the other.

Petitioners also say that if Haslem is not liable on the theory of "respondeat-inferior" then he is liable because he was a participant in a conspiracy, scheme or plan to violate Rule 10b-5. There is no evidence, as the Court of Appeals correctly held, of the existence of any such plan or scheme or that Haslem had any part in or knowledge of such, and petitioners cite none.

Thus Petitioners claim too much for their facts as respects Haslem.

C. Even If the Law as to Privity of Contract or Involvement as a Purchaser or Seller is as Contended by Petitioners, Haslem's Connection With Thirty of the Thirty-Two Transactions Involving the Bellwether Plaintiffs Was Not Sufficient "Nexus" to Expose Him to Liability.

In an effort to induce the Court to hold the defendants Bank, Gale and Haslem liable to the plaintiffs under §10(b) and Rule 10b-5 in transactions where they were not involved, petitioners argue that this Court should not require, as a prerequisite to liability, that the plaintiffs be either a purchaser or a seller of a security or in privity of contract with the defendants. Petitioners urge this Court to reject the so-called "Birnbaum Doctrine" (*Birnbaum v. Newport Steel Corp.*, 193 F.2d 461 (2d Cir. 952) cert. denied 343 U.S. 956 (1952)).

The argument overreaches the facts of this case. In most of the individual transactions, Haslem was not a party nor was he connected with them in any way. (See Appendix "A" to this Brief.) In those cases where Haslem or Gale acted either as a notary public or as a signature guarantor, or both, without more, the Court of Appeals held they were not sufficiently involved to be held liable. In other words, in those cases they did not have sufficient nexus with the operative facts to justify holding them liable for any loss occasioned.

The applicable statute and rule provide as follows:

§10(b) provides:

It shall be unlawful for any person, *directly or indirectly*, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange —

* * *

To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. [Emphasis supplied.]

Rule 10b-5 provides:

It shall be unlawful for any person, *directly or indirectly*, by use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,

(a) to employ any device, scheme, or artifice to defraud,

(b) to make any untrue statement of a material fact or to omit to state a material

fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) to engage in any practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security. [Emphasis supplied.]

From the foregoing it is evident that a person must be "directly or indirectly" involved in the subject transaction before the statute is initially applied and if there is no such involvement no further inquiry need be made. Notwithstanding the use of the term "indirectly" it is submitted that that term still requires, as do the principals of general law, that the defendant Haslem must have a connection, or "nexus," with the operative facts giving rise to the violation of sufficient gravity to justify holding him liable. Any other rule would constitute guilt by association and has never been applied in Rule 10b-5 cases. The facts involved in the cases cited by petitioners are perfectly consistent with this position.

For example, regardless of what this Court may hold in *Manhattan Casualty Co. v. Bankers Life & Casualty Co.*, Docket No. 1159 (Oct. Term 1970) on appeal from *Superintendent of Insurance of the State of New York v. Bankers Life & Casualty Company*, 430 F.2d 355 (2d Cir., 1970), the facts, as gleaned from the opinion of the Court of Appeals, indicate that there the defendants were directly involved in the fraud complained of. In that case there was a complicated scheme to permit certain individuals to acquire all of the outstanding stock of Manhattan Casualty Co. by the use of that company's assets. The suit was brought derivatively on behalf of Manhattan Casualty Company under Sections

17(a) of the Securities Act of 1933 (the "'33 Act") (15 U.S.C. §77q(a)), 10(b) of the '34 Act and Rule 10b-5. All parties to the actual sale of the stock of Manhattan Casualty were fully informed as to the fraudulent scheme, and the claimed fraud was actually practiced by the purchasing defendants on the board members of Manhattan Casualty to induce them to approve transactions which would permit the scheme to work. Regardless of whether this Court deems the defendants' activities there to come within the purview of Sections 17(a) and 10(b) of the respective statutes, there is no question that such activities were connected with the fraud. The "nexus" is plainly evident.

Petitioners also rely upon *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970). There a merger was prevented because of omissions of material facts in a proxy statement sent to shareholders in violation of Sec. 14(a) of the '34 Act (15 U.S.C. 78n (a)). The defendants clearly were responsible for the operative facts giving rise to the relief afforded by the Court. The same is true of the Texas Gulf Sulphur cases (*SEC v. Texas Gulf Sulphur*, 401 F.2d 833 (2d Cir., 1968); *Mitchell v. Texas Gulf Sulphur*, F.2d, CCH Fed. Sec. L. Rep. ¶93,019 (10th Cir. April 26, 1970)).

Thus it is apparent that Haslem cannot be held responsible for any loss suffered in transactions with which he had no, or only nominal, connection because he was not involved "directly or indirectly" and the Court of Appeals was correct in so holding.

POINT II.

THE COURT OF APPEALS PROPERLY RULED THAT RELIANCE AND CAUSATION WERE PROPER ELEMENTS TO BE PROVEN BEFORE PLAINTIFFS COULD RECOVER IN ANY DIRECT TRANSACTION WITH DEFENDANTS.

The Court of Appeals indicated that in some instances where the bellwether plaintiffs sold their stock there were misrepresentations as to the prevailing price. The Opinion indicates, correctly, that the record does not always reveal whether a particular plaintiff was in fact damaged thereby. The Court of Appeals further ruled that the record fails to show that any of the plaintiffs who dealt with the named defendants relied upon any such misrepresentations or that there was a causal connection between such misrepresentations and the damages, if any, suffered. The opinion held that such showings were essential to plaintiffs right to recover.

Petitioners argue that reliance as an element should be dispensed with in Rule 10b-5 actions, stating, at p. 32 of their brief:

The task confronting this Court is to determine if reliance *should* be required in *any* private actions under the Rule. [Emphasis petitioners'.]

The petitioners attempt to support this position by citing several cases and authorities which contain language to the effect that reliance or causation are not elements which must be proven in suits brought under Rule 10b-5. Petitioners argue that to rule otherwise would restrict the courts from providing the necessary benefits to the public that 10b-5 was intended to provide.

While petitioners seem to recognize the need for limits to liability (petitioners' brief p. 28), they fail to provide any meaningful standards by which the courts may properly limit the application of the Rule. In fact, the petitioners urge an abandonment of two of the most useful tools for this purpose, reliance and causation,²

²The 10th Circuit, in its opinion below, intimated that reliance and causation are separate elements. The 2nd Circuit suggests that the test of reliance in non-disclosure cases is "causation in fact." *Chasins v. Smith, Barney & Co.*, 438 F.2d 1167 (2d Cir., 1970); *Crane Co. v. Westinghouse Air Brake Co.*, 419 F.2d 787 (2d Cir., 1969).

resulting in a standard approaching that of strict liability. It is submitted that such a position is erroneous and that an examination of the types of cases typically brought under Rule 10b-5 should result in the adoption by this Court of a useful, if somewhat pragmatic, standard employing the concepts inherent in the doctrine of reliance.

It certainly comes as no surprise to this Court that there are many seemingly contradictory statements in the myriad cases involving the issue of what must be established in order to prove a violation of Rule 10b-5, and particularly whether reliance is an element. Some of the language comes from cases interpreting other analogous Securities Law provisions, such as §14(a) of the '34 Act, which are discussed by petitioners.

First, there are those cases which state that the technical elements of common law fraud need not be shown, e.g., *Securities and Exchange Commission v. Capital Gains Research Bureau*, 375 U.S. 180 (1963) (a violation of the *Investment Advisors Act of 1940* (15 U.S.C. §80b-1 *et seq.*)); *Douglass v. Glen E. Hinton Investment, Inc.*, 440 F.2d 912 (9th Cir., 1971) (a Rule 10b-5 case). Second, there are those cases which state that reliance or causation are not necessary elements which need be shown (*Mills v. Electric Auto-Lite Company*, 396 U.S. 375 (1970) (a violation of §14(a) of the '34 Act), *Kahan v. Rosentiel*, 424 F.2d 161 (3rd Cir., 1970) *cert. denied*, 398 U.S. 950 (1970) (a Rule 10b-5 case). Third, there are those cases which indicate that reliance or causation remains a necessary element of a cause of action for violation of the Securities laws, *Mitchell v. Texas Gulf Sulphur*, ... F.2d ..., CCH Fed. Sec. L. Rep. ¶93,019 (10th Cir., April 26, 1970) (a Rule 10b-5 case); *S.E.C. v. Texas Gulf Sulphur*, 401

F.2d 833 (2d Cir., 1968) (a Rule 10b-5 case); *Clement A. Evans & Co., Inc. v. McAlpine*, 434 F.2d 100 (5th Cir., 1970) (a Rule 10b-5 case); *Chasins v. Smith, Barney & Co.*, 438 F.2d 1167 (2d Cir., 1970) (a Rule 10b-5 case); *Horwitz v. Panhandle Eastern Pipeline Company, et al*, 438 F.2d 53 (10th Cir., 1971) (a Rule 10b-5 case).

Not all of the cases can be satisfactorily reconciled, but there emerges enough of a pattern to suggest to this Court the kind of a test which will work. In the first type of case mentioned above it is clear that a holding that all the elements of common law fraud need not be shown does not necessarily mean that reliance or causation need *not* be shown and the cases in which these statements appear should not be so interpreted. It is in the second and third types of cases that crucial factual distinctions must be ascertained. Typically in those cases where reliance has been deemed not necessary, there was involved a fact situation with multitudinous plaintiffs (usually a stockholder's derivative action) or an omission of a material fact, or both. As noted in *Mills, supra*, 396 U.S. at 382, fn. 5, in those cases where large numbers of plaintiffs are involved or a material omission is the culprit complained of, a showing of reliance would be impossible. As a result, in order to provide members of a class with meaningful relief the courts have permitted the concept of reliance to merge into the concept of materiality. Thus, if the claimed misrepresentation involves a material fact and proof of reliance is difficult, the very materiality of the fact presumes reliance.

Such a conclusion is a fair inference from the language of this Court in *Mills v. Electric Auto-Lite Company*, 396 U.S. 375, at 384-5 (1970):

Where the misstatement or omission in a proxy statement has been shown to be "material," as it was found to be here, that determination itself indubitably embodies a conclusion that the defect was of such a character that it might have been considered important by a reasonable shareholder who was in the process of deciding how to vote. This requirement that the defect have a significant *propensity* to affect the voting process is found in the express terms of Rule 14a-9, and it adequately serves the purpose of ensuring that a cause of action cannot be established by proof of a defect so trivial, or so unrelated to the transaction for which approval is sought, that correction of the defect or imposition of liability would not further the interests protected by §14(a). [Emphasis the Court's.]³

It is submitted that there is another meaningful method of categorizing the cases based upon the standing of the plaintiff and the relief sought. One group of cases arises out of those situations where the Securities and Exchange Commission, or other regulatory body, is taking action to enforce its rules and there a mere showing of the technical breach of the statute or the rules justifies the imposition of the sanctions, which is usually an injunction (e.g., *SEC v. Capital Gains Research Bureau, supra*), but which may also involve other relief. (*SEC v. Texas Gulf Sulphur, supra*). Another group of cases arises out of those situations where the plaintiff is a private party, the remedy sought will benefit or affect the entire class of persons and relief will take the form of a declaratory judgment or an injunction (e.g., *Mills*

³*Kahan v. Roventiel*, 424 F.2d 161 (3d Cir., 1970) interprets this same language as authority for the proposition that reliance is not an independent element which must be established to prove a cause of action under Rule 10b-5. It is submitted that this was error if the element of reliance is deemed to have merged with materiality in the types of fact situations involved in *Mills* and *Kahan*, as is argued here.

v. Electric Auto-Lite Co., supra). However, in the group of cases such as the one now before the Court, where plaintiff seeks relief in the form of damages and he is the one who claims to have been injured by the alleged violation of the Rule by the defendant, he then should be obligated to show reliance and causation in order to recover, because a mere showing of a violation of the Rule would be meaningless without a causal connection.

In those cases where proof of reliance is within the reach of plaintiffs, the courts have continued to apply that requirement. In *Mitchell v. Texas Gulf Sulphur*, F.2d, CCH Fed.Sec.L.Rep. ¶93,019 (10th Cir., April 26, 1970), three plaintiffs sued Texas Gulf Sulphur for violation of Rule 10b-5 based upon a misleading press release. The trial court granted judgments in favor of all three, but the Court of Appeals reversed as to one of the plaintiffs who sold five days after a correcting press release was issued, ruling that he had no right to rely on the first release when the corrective release had been issued.

And in a related case arising out of the same factual situation, the Second Circuit stated (*SEG v. Texas Gulf Sulphur*, 401 F.2d 833 at 860 (2d Cir., 1968)):

Therefore it seems clear from the legislative purpose Congress expressed in the Act, and the legislative history of Section 10(b) that Congress when it used the phrase "in connection with the purchase or sale of any security" intended only that the device employed, whatever it might be, be of a sort that would cause reasonable investors to rely thereon, and, in connection therewith, so relying, cause them to purchase or sell a corporation's securities. . . . [Emphasis supplied]

See also *Clement A. Evans & Co., Inc. v. McAlpine*, *supra*.

If the foregoing rationale is valid, what of the situation where there are multitudinous plaintiffs all claiming damages from a single act on the part of a single defendant, such as in the *Texas Gulf Sulphur* case? It is suggested that this problem is not as difficult as it seems. In the first place, once the defendant is found to have violated the Rule, it is still necessary for each member of the class of plaintiffs to make a showing of the damages he suffered before any recovery is allowed, and, indeed, before the extent of the defendant's liability for damages can be ascertained. Rule 23 of the Federal Rules of Civil Procedure, whereby interrogatories can be submitted to members of the class to be answered under oath, gives the Court the method of determining damages suffered by each member of the class. In that same set of interrogatories the Court can also require each member of the class to present the necessary facts to prove reliance and causation. It would be difficult to imagine that the Court would award damages to a class of plaintiffs without requiring a showing on the part of each member of the class that he was entitled to compensation. It does not seem administratively burdensome to require some showing of reliance in the same manner as courts require a showing of damages.

As Rule 10b-5 cases continue to be brought by individuals and as those individuals seek the relief of damages, the elements of reliance and causation must remain as part of the requirements of proving a cause of action. A rule otherwise would remove any incentive for a person to exercise due diligence for his own protection when entering the securities market place.

In summary, then, it is suggested that there are good reasons for retaining the doctrines of reliance or causation, and that because of those reasons the concepts have not actually been rejected by the courts, although sometimes language in the opinions would seem to indicate otherwise. It is further suggested that in those cases where money damages are not sought and the proof of reliance is so difficult as to be virtually impossible (such as where there has been an omission of a material fact), the courts should examine the materiality of the facts involved. In the event such facts are deemed to be material, then reliance should be presumed and the concept of reliance would then be deemed to have merged into and become a part of the concept of materiality. Also, in those cases where the relief sought is other than money damages, perhaps the degree of proof of reliance can be minimized or also deemed merged into the concept of materiality.

However, in those cases where plaintiffs seek damages, reliance should continue to be an element of proof. Particularly in cases such as this one before the Court, plaintiffs should be required to show that they relied upon any misrepresentations made by defendants, or any of them, and that such misrepresentations were the cause of their losses. The Court of Appeals, in so ruling, should be affirmed.

POINT III.

THE MEASURE OF DAMAGES AS DEFINED BY THE COURT OF APPEALS WAS PROPER AND IN ACCORDANCE WITH PREVAILING LAW.

Petitioners argue that assets owned by the UDC are of such value as to make each share of UDC stock worth in excess of \$28,000 and that the damages awarded should be the difference between that figure and the

price at which plaintiffs sold their stock. The trial court termed the claimed valuation of \$28,000 "speculative" (A. 530), which it certainly is.

While the petitioners spent a great deal of time at trial attempting to produce evidence of the value of mineral reserves on the Indian lands in the form of oil, gas, oil shale, and coal, hoping to establish thereby that the UDC shares had astronomical value, the fact of the matter is that up to and including the time of trial, there were no oil leases on the reservation or on the Indian lands and the tribe had received no proceeds from oil shale (A. 417). The testimony of petitioners' witness, Clarence I. Justheim, was to the effect that at the present time oil shale in the ground or removed by ordinary mining processes was not worth "four cents", until the process for its commercial use by atomic methods had been developed economically, and this would require millions of dollars (A. 375). There were no oil shale leases on Indian lands because no one had shown enough interest to apply for one (A. 417). As far as coal was concerned, there was one coal lease on which a \$200 a year advance rental had been paid, but there had been no production of coal on the Indian lands in recent history (A. 417). The trading value of the shares certainly considered the speculative nature of the assets of UDC and discounted the values testified to by petitioners' witnesses.

If the decision of the Court is to transfer the assets of UDC to the AUC, the matter should rest there, as all of the UDC stock acquired from the plaintiffs would immediately be worthless and the plaintiffs, as members of AUC, would have their interest restored. Surely no further damages should be inflicted.

On the other hand, if the relief requested by petitioners in the AUC case is denied, then the measure of damages should be as defined by the Court of Appeals below, 431 F.2d 1337 at 1348:

The measure of damages for breaches of duty under Regulation 10b-5 is the profit made by the defendant on resale of stock purchased from the plaintiffs. If no resale was made or if the resale was not at arm's length, then the measure is the prevailing market price at the time of the purchase from the plaintiffs

There is virtually no authority to the contrary, and petitioners have cited none. The measure of damages adopted in Rule 10b-5 cases has been the difference between the value of the securities on the date of sale and the amount received for them. *Estate Counseling Service, Inc. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 303 F.2d 527 (10th Cir., 1962) and *Janigan v. Taylor*, 344 F.2d 781 (1st Cir., 1965) cert. denied 382 U.S. 879 (1965). The later case of *Esplin v. Hirschi*, 402 F.2d 94 (10th Cir., 1968) cert. denied 394 U.S. 928 (1969) modified the rule only slightly by measuring the damages as the difference between the amount paid for the security and the value of the securities on the day the plaintiff discovered his cause of action, as distinguished from the date of sale. The Court of Appeals in *Mitchell v. Texas Gulf Sulphur*, *supra*, computed damages on the basis of the difference between the price at which plaintiffs sold their stock and the price at which they could have reacquired those shares after learning the true facts, assuming reasonable diligence on the part of each plaintiff.

As indicated, the value of the shares should be the price at which the shares were being traded, and not

the "speculative" value claimed by petitioners. Petitioners argue that the trading price of the shares is not a fair value, because the defendants were manipulating the market. This claim is without merit. As noted earlier, of the total of 1,387 shares of UDC stock sold by the mixed bloods, Haslem bought only fifty and Gale and Haslem together purchased 113 (8-1/3% of the total) (A. 523).

It seems obvious that the activities of Gale and Haslem, whether considered separately or together, did not constitute a manipulation. In order for a manipulation to exist, the parties must either trade in, or be prepared to trade in, an extensive amount of stock in relation to the total on the market. *In the Matter of Halsey, Stuart & Co., Inc.*; 30 SEC 106 (1949); *In the Matter of Adams & Co., Bennett, Spanier & Co., Inc. and Haas*, 33 SEC 444 (1953); *Volkart Bros., Inc. v. Freeman*, 311 F.2d 52 (5th Cir., 1962). In the latter case, the Court held that a manipulation had not existed because there was no *intent* to manipulate, even though the defendants had cornered the cotton market for one day. It is difficult to see how the defendants, either jointly or severally, affected the market price of the UDC stock. They certainly did not manipulate the stock price.

Further evidence of this is found in the fact that in those instances where Gale or Haslem *sold* shares, the prices received by them were in the same range as shares were being generally traded. If they were "manipulating" the market, it was not to their advantage.

Accordingly, upon remand, the trial court should be instructed to apply the measure of damages as set forth by the Court of Appeals and quoted above.

CONCLUSION

It is respectfully submitted that, so far as the claims of petitioners against the Bank, Gale and Haslem are concerned, the facts of the various transactions before the Court do not justify the final resolution at this time of admittedly very difficult concepts of law. In any event, Haslem's connection with the transactions complained of are virtually *de minimus* and he should have his liability determined accordingly. The Court of Appeals below recognized this case for what it is and its opinion should be upheld.

Respectfully submitted,

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Appendix "A"
SUMMARY OF TRANSACTIONS
INVOLVING TWELVE "BELLWETHER" PLAINTIFFS
 (from Trial Court's Findings of Fact)

NAME	SHARES SOLD BY MIXED BLOODS (BELLWETHER PLS)				SHARES RESOLD BY PURCHASERS				NAME OF PERSON WHO WAS		
	No. of Shares	Date of Sale	Price Per Share*	Buyer	No.	Date of Resale	Price Per Share	Buyer	Notary Public on Affidavit	Signature Guarantor	Comments
Glen Y. Reed (A.475-6)	5	7- 8-64	\$350	Gale	5	8-25-64	\$530	M/M Phelps Arizona	Gale	Gale	Haslem took no part
	5	8-31-64	400	Haslem	5	8-31-64	Not Shown	Rob't Shaw Illinois	NR	Haslem	Nothing in record Haslem made any part transaction.
Fred Larose Burson (A.476-8)	6	11- 6-63	416 ² / ₃	R. Earl Dillman					Dick Bastian	Gale	Haslem had nothing the negotiations, re from sale.
	4	2- 6-64	500	Jack Turner					Gale	Gale	Haslem had nothing the negotiations, re from sale.
Letha Harris Wopsock (inherited 5 plus her own 10) (A.478-81)	5	8- 1-63 11- 4-63	500	Clyde Murray					Gale	Gale	Haslem had nothing the negotiations, re from sale.
	2	2-24-64	700	Bill Hoopes (Trading Post)					Not Shown	Gale	Haslem had nothing the negotiations, re from sale.
	3	8-28-64	333	Bill Hoopes					NR	Gale	Haslem had nothing the negotiations, re from sale.
	3	After 8-27-64	350	Gale as Agent	3	Not Shown		Norval R. & Fern Johnson	NR	Haslem	Haslem took no other than to guar
	1	10- -64	400	Gale					NR	Not Shown	
	1	11- 3-64	350	Gale					NR	Not Shown	Haslem took no part

*As set forth in the offer to the Ute Tribe, where such an offer was made.
 NR—Affidavits were not required because the sale occurred after August 27, 1964.

Appendix

Appendix "A"
SUMMARY OF TRANSACTIONS
INVOLVING TWELVE "BELLWETHER" PLAINTIFFS
 (from Trial Court's Findings of Fact)

SHARES SOLD BY MIXED BLOODS (BELLWETHER PLS)				SHARES RESOLD BY PURCHASERS				NAME OF PERSON WHO WAS		
No. of Shares	Date of Sale	Price Per Share*	Buyer	No.	Date of Resale	Price Per Share	Buyer	Notary Public on Affidavit	Signature Guarantor	Comment
5	7- 8-64	\$350	Gale	5	8-25-64	\$530	M/M Phelps Arizona	Gale	Gale	Haslem took no part in sale.
5	8-31-64	400	Haslem	5	8-31-64	Not Shown	Rob't Shaw Illinois	NR	Haslem	Nothing in record indicates Haslem made any profit on this transaction.
6	11- 6-63	416 ² / ₃	R. Earl Dillman					Dick Bastian	Gale	Haslem had nothing to do with the negotiations, received nothing from sale.
4	2- 6-64	500	Jack Turner					Gale	Gale	Haslem had nothing to do with the negotiations, received nothing from sale.
5	8- 1-63 11- 4-63	500	Clyde Murray					Gale	Gale	Haslem had nothing to do with the negotiations, received nothing from sale.
2	2-24-64	700	Bill Hoopes (Trading Post)					Not Shown	Gale	Haslem had nothing to do with the negotiations, received nothing from sale.
3	8-28-64	333	Bill Hoopes					NR	Gale	Haslem had nothing to do with the negotiations, received nothing from sale.
3	After 8-27-64	350	Gale as Agent	3	Not Shown		Norval R. & Fern Johnson	NR	Haslem	Haslem took no part in sale other than to guarantee signature.
1	10- -64	400	Gale					NR	Not Shown	Haslem took no part in sales.
1	11- 3-64	350	Gale					NR	Not Shown	

the offer to the Ute Tribe, where such an offer was made.
 s were not required because the sale occurred after August 27, 1964.

SHARES SOLD BY MIXED BLOODS (BELLWETHER TFS)					SHARES RESOLD BY PURCHASERS			NAME OF PERSON WHO WAS			
NAME	No. of Shares	Date of Sale	Price Per Share*	Buyer	No.	Date of Resale	Price Per Share	Buyer	Notary Public on Affidavit	Signature Guarantor	Comments
Louise Allen Case (A.481-4)	5	11- 6-63	500	LaVere Labrum (Lynn Labrum & Marion Labrum, 3 shs; Lloyd Labrum & Oleta Labrum, 2 shs)					Gale	Gale	Haslem took no pa
	3	5- 7-64	500	Richard Murray	3	5- 7-64	700	Tillie L. Cullstrom & Laura J. Wood Mason, Ill.	Gale	Gale	Haslem took no sale.
	2	6-29-64	500	Dick Bastian					Dick Bastian	Not Shown	
Melvin Reed (A.484-6)	10	3-11-64	650	Richard Murray					Gale	Gale	Haslem took no p
Marguerite Murray Hendricks (A.486-9)	5	11- 5-63	700	Clyde R. Murray					Jerry M. Murray	Gale	Haslem took no p
	5	2-18-64	700	Richard Murray					Gale	Gale	Haslem took no p
Joseph Arthur Workman (A.489-91)	6	2-10-64	500	Robert Huish					Gale	Gale	Haslem took nb p
	1	11-27-64	350	Haslam (for Accl Haslem)					NR	Not Shown	Nothing in the r Haslem made any transaction.
Leonard Richard Burson (A. 491-2)	10	11- 6-63	500	LaVere Labrum (Lloyd & Oleta Labrum, 5 shs; Lynn & Marion Labrum, 5 shs)					Gale	Gale	Haslem took no p

* As set forth in the offer to the Ute Tribe, where such an offer was made.
NR—Affidavits were not required because the sale occurred after August 27, 1964.

Apper

**SHARES SOLD BY MIXED BLOODS
(BELLWETHER PLS)**

**SHARES RESOLD
BY PURCHASERS**

**NAME OF PERSON
WHO WAS**

No. of Shares	Date of Sale	Price Per Share*	Buyer	No.	Date of Resale	Price Per Share	Buyer	Notary Public on Affidavit	Signature Guarantor	Comment
5	11- 6-63	500	LaVere Labrum (Lynn Labrum & Marion Labrum, 3 shs; Lloyd Labrum & Oleta Labrum, 2 shs)					Gale	Gale	Haslem took no part in sale.
3	5- 7-64	500	Richard Murray	3	5- 7-64	700	Tillie L. Cullstrom & Laura J. Wood Mason, III.	Gale	Gale	Haslem took no part in either sale.
2	6-29-64	500	Dick Bastian					Dick Bastian	Not Shown	
10	3-11-64	650	Richard Murray					Gale	Gale	Haslem took no part in sale.
5	11- 5-63	700	Clyde R. Murray					Jerry M. Murray	Gale	Haslem took no part in sale.
5	2-18-64	700	Richard Murray					Gale	Gale	Haslem took no part in sale.
6	2-10-64	500	Robert Huish					Gale	Gale	Haslem took no part in sale.
1	11-27-64	350	Haslam (for Acel Haslem)					NR	Not Shown	Nothing in the record indicates Haslem made any profit on this transaction.
10	11- 6-63	500	LaVere Labrum (Lloyd & Oleta Labrum, 5 shs; Lynn & Marion Labrum, 5 shs)					Gale	Gale	Haslem took no part in sale.

the offer to the Ute Tribe, where such an offer was made.
were not required because the sale occurred after August 27, 1964.

NAME	SHARES SOLD BY MIXED BLOODS (BELLWETHER PLS)				SHARES RESOLD BY PURCHASERS				NAME OF PERSON WHO WAS		
	No. of Shares	Date of Sale	Price Per Share*	Buyer	No.	Date of Resale	Price Per Share	Buyer	Notary Public on Affidavit	Signature Guarantor	Comments
Wan F. Curry (A.492-4)	1	2-14-64	700	John Chasel					Gale	Gale	Haslem took no p
	1	2-19-64	700	Orin Swain					Gale	Gale	sale.
	3	3-24-64	700	Clyde R. Murray					Gale	Gale	Haslem took no pa
	2	8-18-64	600	Dick Bastian					Irene K. Ruppel	Gale	Haslem took no pa
	1	10-23-64	300	Dick Bastian					NR	Haslem	Haslem took no pa
	1	12-4-64	300	Dick Bastian					NR	Haslem	except as a signat
	1	1-4-65	300	Dick Bastian					NR	Haslem	and received noth
	5	10-63	500	Clyde R. Murray					Gale	Gale	Haslem took no pa
Stewart Eugene Reed (A.495-6)	5	2-21-64	500	Wallace A. Davis					Haslem	Haslem	Haslem took no p cept as a notary p nature guarantor nothing therefrom
Richard R. Curry, Sr. (A.496-8)	5	11-6-63	700	Clyde R. Murray					Jerry Murray (Clyde's son)	Gale	Haslem took no p
	3	9-2-64	350	Richard Murray					NR	Not Guaranteed	Haslem took no p
	2	9-14-64	400	Gordon E. & Clara Mae Harmston					NR	Gale	Haslem took no p
Charles T. Reed (A.498-9)	10	10-5-64		Richard Murray	10	Not Shown		Benjamin T. Shaw Trust Dixon, Ill.	NR	Gale	Haslem took no p

*As set forth in the offer to the Ute Tribe, where such an offer was made.
NR—Affidavits were not required because the sale occurred after August 27, 1964.

Appendix

**SHARES SOLD BY MIXED BLOODS
(BELLWETHER PLS)**

**SHARES RESOLD
BY PURCHASERS**

**NAME OF PERSON
WHO WAS**

No. of Shares	Date of Sale	Price Per Share*	Buyer	No.	Date of Resale	Price Per Share	Buyer	Notary Public on Affidavit	Signature Guarantor	Comment.
1	2-14-64	700	John Chasel					Gale	Gale	Haslem took no part in either
1	2-19-64	700	Orin Swain					Gale	Gale	sale.
3	3-24-64	700	Clyde R. Murray					Gale	Gale	Haslem took no part in sale.
2	8-18-64	600	Dick Bastian					Irene K. Ruppel	Gale	Haslem took no part in sale.
1	10-23-64	300	Dick Bastian					NR	Haslem	Haslem took no part in any sale,
1	12-4-64	300	Dick Bastian					NR	Haslem	except as a signature guarantor,
1	1-4-65	300	Dick Bastian					NR	Haslem	and received nothing therefrom.
5	10-63	500	Clyde R. Murray					Gale	Gale	Haslem took no part in sale.
5	2-21-64	500	Wallace A. Davis					Haslem	Haslem	Haslem took no part in sale ex- cept as a notary public and sig- nature guarantor and received nothing therefrom.
5	11-6-63	700	Clyde R. Murray					Jerry Murray (Clyde's son)	Gale	Haslem took no part in sale.
3	9-2-64	350	Richard Murray					NR	Not Guaranteed	Haslem took no part in sale.
2	9-14-64	400	Gordon E. & Clara Mae Harmston					NR	Gale	Haslem took no part in sale.
10	10-5-64		Richard Murray	10	Not Shown		Benjamin T. Shaw Trust Dixon, Ill.	NR	Gale	Haslem took no part in sale.

the offer to the Ute Tribe, where such an offer was made.
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Supreme Court of the United States

No. 70-78

**AFFILIATED UTE CITIZENS OF THE STATE
OF UTAH, ET AL., *Petitioners***

v.

UNITED STATES OF AMERICA, *Respondent*

, ANITA REYOS, ET AL., *Petitioners*

v.

**FIRST SECURITY BANK OF UTAH, N.A., UNITED
STATES OF AMERICA, ET AL., *Respondents***

**MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE
AND BRIEF OF THE NATIVE AMERICAN RIGHTS
FUND, AS AMICUS CURIAE**

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IN THE
Supreme Court of the United States

No. 70-78

AFFILIATED UTE CITIZENS OF THE STATE
OF UTAH, ET AL., *Petitioners*

v.

UNITED STATES OF AMERICA, *Respondent*

ANITA REYOS, ET AL., *Petitioners*

v.

FIRST SECURITY BANK OF UTAH, N.A., UNITED
STATES OF AMERICA, ET AL., *Respondents*

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The Native American Rights Fund respectfully moves the Court pursuant to Rule 42(2) and 42(3) for an Order granting leave to file the attached brief *amicus curiae* in the above-captioned cases. Respondent First Security Bank of Utah, N.A., has refused to consent to the filing of the brief. The other parties, including the Solicitor General on behalf of the Respondent United States, have granted their consent to the filing of this brief *amicus curiae*.

The Native American Rights Fund (herein referred to as the "Fund") is a private, non-profit corporation organized for the purpose of and dedicated to protecting the rights and enhancing the general welfare of American Indians and providing legal representation and counsel in cases of major significance. The Fund appears herein and submits this brief *amicus curiae* because of its general interest in the subject of termination legislation and in the treatment of Indians and Indian groups accorded by the United States thereunder. The Fund also has a specific interest in the effects, interpretation and application of the termination legislation here under review,¹ and in the protection of the rights of the mixed-blood members of the Ute Indian Tribe in connection with the termination process.

The Fund by this motion is seeking leave to file its brief at a time subsequent to the filing of Petitioners' brief. Accordingly, the Fund seeks an Order of the Court pursuant to Rule 42(2) as well as leave to file the brief pursuant to Rule 42(3). However, since it appears that none of the parties would be prejudiced by the filing of the Fund's brief at the present time, as set out hereinafter, we will discuss the reasons for granting the Motion principally in relation to Rule 42(3).

The issues raised in the accompanying brief relate solely to the legal relationship and attendant responsibilities between the United States and the mixed-blood group of the Ute Indian Tribe. No issues are raised which affect the remaining respondents in the case. Accordingly, the fact that the United States has

¹ Ute Termination Act, Public Law 83-671, Act of August 27, 1954, 68 Stat. 868, 25 U.S.C., § 677, *et seq.*

consented to the filing of the brief at this time should weigh heavily in the Court's determination regarding leave to file.

Correspondingly, the fact that a single Respondent, the First Security Bank of Utah, has not consented to the filing of this brief *amicus curiae*, should not bear heavily in the Court's ruling upon this Motion.

In addition, the filing of the brief is sufficiently in advance of the Court's October Term, and the brief is sufficiently limited in scope, that we would anticipate no undue inconvenience for the Court by the filing of the Fund's brief at this time. Accordingly, the Fund respectfully requests that the Court, by Order issued pursuant to Rule 42(2), allow the Fund to file the accompanying brief.

This case presents issues of substantial and particular importance to the Fund. Several of these questions have been ably presented and analyzed in the briefs filed by Petitioners and by the Association on American Indian Affairs, Inc. However, two issues remain which have not been developed fully by other parties in the case.

The first such issue involves the continuing responsibility of the United States to the mixed-blood members of the Ute Tribe as those responsibilities are set out in the "Termination Act" here in question. This issue is complementary to, but different from, the question raised in the brief filed by the Association on American Affairs, Inc. That brief dealt directly and ably with the continuing trust responsibilities of the United States to the mixed-blood group following termination. The brief of the Fund, on the other hand, deals with the specific statutory rights of the mixed-blood group under the Termination Act without spe-

cific regard to any continuing trust obligation of the United States.

Of particular importance in this regard is the "right-of-first-refusal" established by section 15 of the act,² and whether such right inures to the benefit of the mixed-blood members as well as the full-blood members of the Tribe. The position of the Fund is that these statutory rights created by the Termination Act apply equally for the benefit of the mixed-blood members and cannot be abrogated by administrative action or oversight or ignored by the Courts.

The second issue of importance to the Fund and to the disposition of this case is the jurisdictional question raised in *Affiliated Ute Citizens, et al. v. United States*.

This question is of great significance to many groups of American Indians and has not been developed in the briefs filed by the other parties to these proceedings. The position of the Fund is that a jurisdictional basis exists for determining the claims presented in that action, and that the Court of Appeals below erred in holding otherwise.

The Fund, in its attached brief, presents a position to the Court on the foregoing issues which has not, and cannot adequately be represented by the other parties to the proceedings. The United States denies the statutory rights of the mixed-blood group under the Termination Act and further denies the jurisdictional claim of the Affiliated Ute Citizens. The Petitioners are interested primarily and properly in maximizing their monetary recovery and have, therefore, emphasized the question of specific liability under the securities laws of the United States. The Fund, on the

² 25 U.S.C., § 677n.

other hand, is most intimately concerned with broader statutory rights and duties which may affect the overall relationship between the United States and American Indians and their right to a forum for the redress of grievances occasioned by the action of the Government or others. Consequently, it presents a viewpoint to the Court which is different from that of the parties, and similar to that of the Association on American Indian Affairs, Inc.

For the foregoing reasons, the Fund requests that its motion for leave to file the accompanying brief *amicus curiae* be granted.

Respectfully submitted,

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FIRST SECURITY BANK OF UTAH, N.A., UNITED
STATES OF AMERICA, ET AL., *Respondents*

**BRIEF OF NATIVE AMERICAN RIGHTS FUND, AS
AMICUS CURIAE**

STATEMENT

The Native American Rights Fund (herein referred to as the "Fund") is a private, non-profit corporation organized for the purpose of and dedicated to protecting the rights and enhancing the general welfare of American Indians and providing legal representation and counsel in cases of major significance. The Fund appears herein and submits this brief as *amicus curiae* because of its general interest in the subject of termination legislation and in the treatment of Indians

and Indian groups accorded by the United States thereunder. The Fund also has a specific interest in the effects and application of the termination legislation here under review,¹ and the protection of the rights of the mixed-blood members of the Ute Indian Tribe in connection with the termination process.

It is the position of the Fund that the Ute Termination Act established certain specific statutory rights which inure to the benefit of the terminated mixed-blood members of the tribe as well as to the non-terminated full-blood group and that it was the responsibility and duty of the United States to protect and enforce such rights uniformly as between the two factions of the Tribe. It is the contention of the Fund that the United States has failed to discharge these responsibilities and duties to the mixed-blood group during the termination process and that, as a result, such rights have been abrogated unlawfully and withheld unreasonably from the mixed-blood group.

It is the further position of the Fund that there is a basis for the jurisdiction of the Court below to adjudicate the claims herein presented by individual Indians or groups thereof for a *pro rata* share of the minerals underlying the Uintah and Ouray Reservation, and that the Court below erred in concluding that jurisdiction was lacking.

By way of background, the Ute Termination Act, passed in 1954 as part of the now-discredited termination policy,² was the only termination act which sought

¹ Ute Termination Act, Public Law 83-671, Act of August 27, 1954, 68 Stat. 868, 25 U.S.C. § 677, *et seq.*

² See the President's Message to Congress on Indian Affairs, H.R. Doc. No. 363, 91st Cong., 2d Sess., 1970, in which the termination policy was characterized as "clearly harmful."

to apply the policy to less than an entire Indian Tribe. Under these circumstances, the mixed-blood members of the Ute Tribe³ were visited with all the "clearly harmful" results of the termination process, together with the inequities arising out of the division, partition and allocation of tribal assets as between the full-blood and mixed-blood members of the tribe.

This case demonstrates, then, not only the failure of the termination process, but the egregious inequities which occurred when the Ute Tribe of Indians was split asunder by the termination process and a band of mixed-blood Indians was left virtually without a remedy in those matters requiring a division of property or an equitable allocation of rights as between the "full" and "mixed-blood" members of the Tribe. The inequities and injustices visited upon the mixed-blood members of the Tribe, and the restrictive and onerous interpretation of the Termination Act by the Court below, are clearly before this Court in the captioned cases and should be finally resolved.

A brief statement of the salient facts surrounding the transactions in question will serve to highlight the issues before the Court. In this regard, the Fund concurs in the allegations and assertions of the Petitioners that they are entitled to redress pursuant to the Securities Exchange Act of 1934.⁴ However, the Fund has not undertaken to brief this issue, having

³ Note: Section 2 of the Ute Termination Act, 68 Stat. 868, 25 U.S.C., sec. 677a, defines "Full-Blood" as any member of the tribe who possesses one-half degree of Ute Indian blood and a total of Indian blood in excess of one half. All others fall within the definition of "mixed-blood" subject to termination of the Federal trust relationship.

⁴ 15 U.S.C., § 78a *et seq.*

chosen to confine itself to those aspects of the case which relate exclusively to Indian legislation.

The rights asserted by the Petitioners are those deriving from the Ute Termination Act,⁵ which directed that the Federal trust relationship between the United States and the "mixed-blood" members of the tribe be terminated under the terms of the statute. Under the statute, certain assets were distributed to the mixed-bloods upon termination. Interests in other assets purportedly not susceptible to distribution (most notably gas, oil and mineral interests) were allocated between the mixed-blood and full-blood members of the Tribe. Title to these assets remained in the United States and the mixed-bloods were permitted to form associations for the management and handling of these assets.

The Ute Distribution Corporation (UDC) was organized, albeit without the consent of the mixed-blood group, to perform these functions on behalf of the mixed-bloods and to work in conjunction with the Tribal Committee which had authority to manage the full-bloods' interest in these tribal assets. The interest of the mixed-bloods in the UDC was manifest by some ten shares of stock issued to each mixed-blood member.

The Petitioners, each shareholders in UDC and members of the terminated mixed-blood group, disposed their respective shares of UDC stock, as did other mixed-blood members, in questionable and probably fraudulent transactions which occurred, for the most part, after the publication of the Termination Proclamation on August 26, 1961,⁶ but before the

⁵ *Supra*, note 1.

⁶ 26 Fed. Reg. 8042.

date of August 27, 1964. The latter date, the tenth anniversary of the Termination Act, is of significance for reasons set forth hereinafter.

As a result of the transactions in question, and the lack of adequate supervision and control thereof by officials of the United States, the petitioners and most of the other mixed-blood shareholders of UDC lost and/or were deprived of their respective shares of the tribal assets or the value thereof. Moreover, during the termination process, the mixed-bloods were deprived of certain rights and privileges imposed and established for their protection by the Termination Act.

INTEREST OF THE NATIVE AMERICAN RIGHTS FUND AS AMICUS CURIAE

The interest of the Native American Rights Fund as *amicus curiae* in these proceedings is set forth in the Fund's Motion For Leave to File Brief Amicus Curiae, to which this brief is appended.

ARGUMENT

I

THE UTE TERMINATION ACT CREATED RIGHTS, DUTIES AND PRIVILEGES WHICH APPLY, WITH EQUAL FORCE AND EFFECT, TO BOTH THE "FULL-BLOOD" AND "MIXED-BLOOD" MEMBERS OF THE UTE TRIBE OF INDIANS

Throughout the proceedings below, and in related litigation,⁷ the Court of Appeals for the 10th Circuit below has consistently held⁸ or implied, that the Ute Termination Act⁹ was passed for the primary, if not

⁷ See e.g., *Ute Indian Tribe of Uintah and Ouray Reservation v. Probst*, 428 F.2d 491 (10th Cir. 1970).

⁸ *Ibid.*

⁹ Act of August 27, 1954, 68 Stat. 868, 25 U.S.C., §§ 677, et seq.

exclusive benefit, of those Indians who, by reason of arbitrary blood classifications, were to remain on the reservation subject to the Federal trusteeship. This implication pervades the proceedings below and immeasurably prejudices the rights of those members of the Tribe who were to fall victim to the vicissitudes of the termination process.

The tendency to favor those remaining under the Federal stewardship flows naturally from the spirit and effect of the misguided termination legislation. However, as the Fund submits and shows the Court more fully hereinafter, the Congressional intent in enacting the Ute Termination Act was neither to change the "Indian" status of the "mixed-bloods", nor to extend the protective features of the legislation to one group to the detriment of the other. To the contrary, the protective provisions of the Act were intended to apply equally to both factions of the Tribe or primarily, if not exclusively, to the mixed-bloods who were terminated.

A. The Court Below Erroneously Construed the Ute Termination Act To Create Rights in the "Full-Blood" Members of the Tribe to the Exclusion of the "Mixed-Blood" Members of the Tribe

To illustrate the obvious lack of concern for the "mixed-blood" members of the Tribe, we refer the Court to the Court of Appeals' analysis of section 15 of the Ute Termination Act¹⁰ which vests certain rights and privileges in connection with the sale of property and assets received in distribution upon termination in the following terms:

Any member of the mixed-blood group may dispose of his interest in the tribal assets prior

¹⁰ 25 U.S.C., § 677a.

to termination of Federal supervision, subject to the approval of the Secretary. In the event a member of the mixed-blood group determines to dispose of his interest in any of said real property at any time within ten years from August 27, 1954, he shall first offer it to the members of the tribe, and no sale of any interest, prior to termination of Federal supervision, shall be authorized without such offer to said members of the tribe in such form as may be approved by the Secretary. After termination of Federal supervision the requirement of such offer, in form to be approved by the Secretary, shall be a covenant to run with the land for said ten-year period, and shall be expressly provided in any patent or deed issued prior to the expiration of said period.

The trial court below found that this provision extended the Federal trusteeship or created a limited trusteeship with respect to all members of the Tribe (including the mixed-blood members subject to termination) and that the United States, therefore, had a continuing obligation to supervise the disposition of such assets and to discourage and prevent improvident and improper sales of such assets by both groups. The Fund subscribes to the view enunciated by the trial court, for it is likely that had the right-of-refusal been guaranteed to the mixed-blood group, as well as the full-bloods, the improvident and fraudulent sales by the individual mixed-bloods would not have been consummated. At very least, there would have been notice to the Affiliated Ute Citizens, and an opportunity to prevent the occurrence of such injustices.

On appeal, however, the Court of Appeals reversed the trial court on this issue, concluding that the foregoing provision creates ". . . no more than a typical right of refusal in the members of the Tribe or in the

Tribe".¹¹ The Court then avoided the question whether the mixed-blood are "members of the Tribe" for the purpose of exercising and taking advantage of the right-of-refusal provision of the Act¹² and proceeded to the conclusion that:

The right of refusal thus created no duty on the part of the Government to the then terminated mixed-blood plaintiffs who were seeking to sell their shares of stock.¹³

The gist of the Court of Appeals' decision is that, upon termination, the mixed-blood members of the Tribe ceased to enjoy any of the protective provisions of the Termination Act or other related Federal legislation inasmuch as their status as "Indians" and wards of the Government had abruptly ended. In this, the Court below erred.

It is relevant to point out that the Ute Termination Act was directed at and applied to the mixed-blood members of the Tribe who were being terminated. The entire thrust of this legislation, like all of the termination acts, was the establishment of the terms and conditions under which such Indians would be removed from the public trust. Any effects of such laws upon Indians not terminated thereby were purely coincidental. This point is critical to an understanding of the current dispute.

¹¹ 431 F.2d at 1342.

¹² The Court below cites the reader to Ute Indian Tribe of Uintah and Ouray Reservation v. Probst, 428 F.2d 491 (10th Cir. 1970), which, the Fund submits, erroneously concluded that the mixed-blood members do not enjoy the right-of-refusal privileges of the Act.

¹³ 431 F.2d at 1343.

In this regard, the full-blood members of the Tribe remained, and remain today, under the trusteeship and protection of the United States. Those laws relating to the sale and disposition of restricted Indian property are as applicable today as they were at the time of termination of the mixed-bloods.

Under general principles of Indian law, such sales and disposition can occur only with the express consent of the Secretary of the Interior or his delegate and only then under strict statutory guidelines. The provisions of the Termination Act were intended merely to supplement this body of law and to apply only to the special situation created by the termination of Federal supervision over that portion of the Tribe found to be "mixed-bloods". No new or exclusive rights were vested in the full-blood members of the Tribe. Whatever new rights, privileges and duties were created by the Act applied either, (1) exclusively to those who were subject to the termination process or, (2) to the "members of the Tribe" generally which, for the purposes of the Act, included both the "full" and "mixed" blood members of the Tribe.

With respect to the latter point, the Fund invites the Court's attention to the definition of "Tribe" and its membership as set forth in the Act¹⁴ and in the Regulations promulgated by the Secretary of the Interior thereunder.¹⁵ The Regulations specifically include the mixed-bloods within the definition. This interpretation was adopted and applied by the Office

¹⁴ See section 2, 25 U.S.C. § 677a(a) which provides: "'Tribe' means the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah."

¹⁵ See 25 C.F.R., § 243.2(c): which provides: "(c) 'Member of the tribe' means all mixed-blood and full-blood members . . ."

of the Solicitor, Department of the Interior in an opinion issued November 30, 1956. The decision, which was included in the record before the Court in the *Reynos* case below, concludes that "... tribe as used ... throughout the Act, refers to both 'full-blood' and 'mixed-blood' members unless specifically limited to one or the other of these classes of tribal members. . . ." (A copy of this opinion is reproduced in the Appendix hereto.) Thus, the interpretation by the Court below which excludes the mixed-blood from the "Tribe", renders the Regulations wholly superfluous and completely disregards the determination of the agency charged with the administration of the Termination Act.

The right-of-refusal established and extended to the "Tribe" and to members of the Tribe as defined in the Ute Termination Act was and is valuable property right.¹ At all times relevant to these proceedings, the right-of-refusal was extended to and observed with respect to the "Tribe" and its full-blood members. Yet, at no time did the United States extend or seek to protect this right on behalf of the mixed-blood members individually or through their representative organization, Affiliated Ute Citizens of the State of Utah.

As this Court has reiterated many times,¹⁶ and most recently in *Menominee Tribe v. United States*, 391 U.S. 404 (1968), the abrogation or modification of the rights of Indians, whether created by statute or by Treaty, "... is not to be lightly imputed to Congress".¹⁷

¹⁶ See, e.g., *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903); *Squire v. Capoeman*, 351 U.S. 1 (1956); *Choate v. Trapp*, 224 U.S. 665 (1912).

¹⁷ *Menominee Tribe v. United States*, *supra*.

Moreover, in the construction of statutes delineating the rights and privileges of Indians, this Court has taught that:

The construction, instead of being strict, is liberal; doubtful expressions, instead of being resolved in favor of the United States are to be resolved in favor of a weak and defenseless people . . . In view of the universality of this rule [legislation] should be liberally construed in their favor . . .¹⁸

Nor should rights created by Congress be subject to administrative abrogation by officials of the Government.¹⁹

Even the Tenth Circuit Court of Appeals apparently has some difficulty with the question of the status of the mixed-blood Utes upon termination. In *Affiliated Ute Citizens of the State of Utah v. United States*,²⁰ one of the two cases before the Court in the present proceeding, the lower Court describes the mixed-blood members of the Tribe and their representative (Affiliated Ute Citizens of the State of Utah) in the following terms:

The plaintiff is an unincorporated association organized for and on behalf of some 490 mixed-bloods *who were formerly or may now be members*

¹⁸ Choate v. Trapp, *supra*, 224 U.S. at 675. See also *United States v. Santa Fe Pacific Railway Co.*, 314 U.S. 339 (1941), *reh. den.*, 314 U.S. 716 (1942); *Leavenworth, etc., R.R. Co. v. United States*, 92 U.S. 733 (1876); *United States v. Shoshone Tribe, etc.*, 304 U.S. 111 (1938); and, *Bennett County, South Dakota v. United States*, 394 F.2d 8 (8th Cir. 1968).

¹⁹ See *United States v. Arenas*, 158 F.2d 730, 747-48 (9th Cir. 1946); *cert. denied*, 331 U.S. 842 (1947).

²⁰ 431 F.2d 1349 (10th Cir. 1970).

*of the Ute Indian Tribe of the Uintah and Ouray Reservation.*²¹

The uncertainty of the Court of Appeals in the Affiliated Ute Citizens case below cannot be reconciled with the pronouncements of the same court in *Reynos*²² and its holding in *Ute Indian Tribe of the Uintah and Ouray Reservation v. Probst*,²³ in the context of its refusal to extend the right-of-refusal provisions of the Termination Act to the mixed-blood members of the Tribe. According to the Court of Appeals in the latter case:

... the first-refusal provision is primarily for the benefit of the Tribe and its full-blood members and only incidentally for the benefit of the selling mixed-blood.²⁴

The Fund submits that the inconsistent and ambiguous treatment of the Court of Appeals with respect to the applicability of the right-of-refusal provisions of the Act, and its refusal to accord equal treatment to both factions of the Tribe, demonstrate a patent disregard for the rights and privileges of the "mixed-blood" Utes in the termination process, and a clear misconception of the letter and spirit of the Ute Termination Act.

²¹ 431 F.2d at 1350.

²² *Supra*, footnote 11.

²³ 428 F.2d 491 (10th Cir. 1970).

²⁴ 428 F.2d at 497-98.

B. The Court Below Erroneously Concluded That All Duties and Responsibilities of the United States to the Mixed-Blood Members of the Tribe Ceased With the Publication of the Termination Proclamation

The Fund challenges the assumption, apparently indulged in by the Court of Appeals below, that, with the publication of the Termination Proclamation of August 26, 1961, all obligations and duties of the United States to the mixed-blood ceased along with Federal supervision over the individuals affected and their property rights for all purposes. This conclusion is demonstrably erroneous on the basis of the terms of the Act, the regulations thereunder, the legislative history of the Act and related legislation and the legal precedents applicable in the premises.

The Ute Termination Act, by its terms, established a continuing relationship and certain legal responsibilities between the United States and the mixed-blood members of the tribe. In this regard, sections 10, 15 and 16 of the Act²⁵ clearly contemplate the continuation of Federal supervision over a portion of the assets of the mixed-bloods, *i.e.*, those tribal assets not susceptible to partitioning and pro-rata distribution. In this regard, section 15 of the Act provides, *inter alia*, that:

... In the event a member of the mixed-blood group determines to dispose of his interest in any of said real property at any time within ten years from August 27, 1954, he shall first offer it to the members of the tribe, and no sale of any interest, prior to termination of Federal supervision, shall be authorized without such offer to said members of the tribe in such form as may be approved by the Secretary.

²⁵ 25 U.S.C., §§ 677i, 677n and 677o.

Section 16 also contemplates the continuation of Federal responsibilities with respect to other property rights of the mixed-bloods. This section established the procedure and terms under which the mixed-blood members of the tribe shall receive distributive shares of the tribal assets distributed to the mixed-bloods and provides that, upon such distribution:

. . . Federal supervision of such [mixed-blood member] and his property shall thereby be terminated, *except as to his remaining interest in tribal property in the form of any unadjudicated or unliquidated claims against the United States, all gas, oil and mineral rights of every kind, and all other tribal assets not susceptible to equitable and practicable distribution* . . . (Emphasis added).

Similarly, section 10 of the Termination Act provides for a continuing responsibility on the part of the United States:

All unadjudicated or unliquidated claims against the United States, all gas, oil and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall be managed jointly by the Tribal Business Committee and the authorized representatives of the mixed-blood group, *subject to such supervision by the Secretary as is otherwise required by law*. . . . (Emphasis added).

Thus, with respect to the property specified in the statute, the United States retained the duties and obligations of a trustee of such assets to the end that such assets were not dissipated through improvident sales or other forms of disposition.

The continuation of such responsibilities by the United States following the termination, in whole or

part, of the Federal trusteeship has been repeatedly recognized and sustained by this Court.²⁶ The adjudicated cases for the most part, confirm the right and duty of the United States to continue to administer, manage property or enforce restrictions upon the alienation of Indian property according to the terms and conditions specified by Congress upon the termination of Federal supervision or following any significant change in the status of Indians as dependent wards of the United States.²⁷

Moreover, Congress has frequently provided that a limited trusteeship shall exist upon termination as to certain assets and this court has held that such provisions are neither unconstitutional nor inconsistent with the Congressional intent to ultimately end the Federal trust relationship.²⁸ Such provisions, as this Court has recognized, are frequently necessary to facilitate an orderly transition from a wholly dependent status to one of independence and ultimate assimilation into the society at large.

We need not here challenge the right of the Congress either to terminate Federal supervision over Indians

²⁶ See, e.g., *Tiger v. Western Investment Company*, 221 U.S. 286 (1911) (continuation of Federal trust responsibilities after rights citizenships were conferred); *United States v. Waller*, 243 U.S. 452 (1917); *Brader v. James*, 246 U.S. 88 (1918); *Menominee Tribe v. United States*, 391 U.S. 404 (1968) (enforcement of hunting and fishing privileges conferred by Treaty); *Crain v. First National Bank of Oregon*, 324 F.2d 532 (1963) (enforcement of specific individual trusts created upon termination).

²⁷ The issue first arose in connection with the continuation of Federal supervision over Indians and their property once Indians were extended the rights and privileges of citizenship. See authorities set forth in footnote 26, *supra*.

²⁸ See authorities cited in footnote 26, *supra*.

or its prerogatives in dictating the terms and conditions under which this is to be accomplished. Rather, we dispute the lower Court's conclusion that the "... limited aspects of the federal trust relationships" did not continue after promulgation of the termination proclamation, and that the United States owed no continuing duty to the mixed-blood members of the Tribe.

The statutory duties imposed in sections 10, 15 and 16 of the Act, as quoted hereinabove, clearly contradict the Court's conclusion. These duties, and the attendant fiduciary responsibilities of the United States with respect to the classes of property therein specified, extend beyond the date of the Act and the date of the Termination Proclamation and obtained at the time of the transactions in question. Indeed, to the extent that the United States holds title to and administers such property, even at the present time, such duties and responsibilities continue.

Moreover, contrary to the conclusion reached by the Court of Appeals, the Fund suggests and urges that the right-of-refusal provision of the Act,²⁹ if properly applied and administered for the benefit of all members of the Tribe,³⁰ established additional duties and responsibilities in the nature of a residual wardship or trust relationship which continued beyond the date of the Termination Proclamation. Indeed, had the Court below extended this right uniformly to all members of the Tribe without preference to the full-blood members of the Tribe, the existence of a corresponding trusteeship or wardship could not be open to question.

²⁹ 25 U.S.C., § 677n.

³⁰ See section I-A, *supra*.

In refusing to recognize the continuing responsibilities of the United States, the Court of Appeals cites and relies upon *Crain v. First National Bank of Oregon*,³¹ *Menominee Tribe v. United States*,³² and *Klamath and Modoc Tribe v. Maison*,³³ for the proposition that express authority for a residual wardship or the continuation of the United States' trust relationship toward an Indian Tribe must be found in the termination legislation or stem from treaty obligations not abrogated by the Termination Act.

The Fund submits that the Court of Appeals relied upon a far too restrictive analysis of the cases cited and the doctrines enunciated therein. In this regard, it is clear that the *Crain* case stands for the proposition that "express trusts" created for the benefit of Indians "in need of assistance in conducting their affairs" are valid and enforceable notwithstanding that Federal supervision over the Tribe and its members has been terminated. The *Crain* case, however, does not purport to deal with the question of the creation of a continuing trust relationship or limited wardship by implication or by operation of law under the terms and conditions of the Termination Act or treaty rights.³⁴

Here, the federal trusteeship or limited wardship is clearly contemplated, if not expressly created, in section 16 of the Act and arises by operation of law in connection with the right-of-refusal provisions of section 15 of the Act. Thus, we must deal here with ex-

³¹ 324 F.2d 532 (9th Cir. 1963).

³² 391 U.S. 404 (1968).

³³ 338 F.2d 620 (9th Cir. 1964).

³⁴ See, e.g., *Menominee Tribe v. United States*, *supra* n.28.

press rights accorded and established by statute—rights far more explicit than those found to exist in the *Menominee* case where this Court had to look beyond the terms of the Menominee Termination Act to historic treaty rights which survived the termination process.

While the Fund is shocked at the action or inaction of the Bureau of Indian Affairs and the Secretary of the Interior in the transactions involved in this case and the resulting inequities to the individual petitioners, it is more acutely alarmed at the implications of the decision below sustaining such action and, the utter disregard of the plain provisions of the Act as well as a wealth of legal precedent³⁵ which has historically recognized the peculiar status of the Indian and extended him a legal basis and forum for the redress of grievances occasioned by the Government or others. In short, the decision of the Court of Appeals undermines settled principles of law applicable to Indian rights generally and, unless corrected by this Court, will gravely threaten the rights of Indians throughout the country.

II.

A CLEAR BASIS OF JURISDICTION EXISTS FOR ADJUDICATION OF THE CLAIMS PRESENTED IN *AFFILIATED UTE CITIZENS v. UNITED STATES*

In *Affiliated Ute Citizens of the State of Utah v. United States*,³⁶ the Court of Appeals below held that no jurisdictional basis exists for the adjudication of plaintiffs' claims for a *pro rata* share of the oil, gas

³⁵ See, e.g., *United States v. Santa Fe Pacific R. Co.*, 314 U.S. 339 (1941), *reh. den.*, 314 U.S. 716 (1942); *United States v. Shoshone Tribe*, 304 U.S. 111 (1938); *Bennett County v. United States*, 394 F.2d 8 (8th Cir. 1968).

³⁶ 431 F.2d 1349 (10th Cir. 1970).

and other minerals underlying the Uintah and Ouray Reservation. It is unclear whether the Court of Appeals based its determination partially upon the doctrine of sovereign immunity, as did the District Court below, or exclusively upon the lack of a jurisdictional statute conferring subject matter jurisdiction. In either event, The Fund submits that the Court of Appeals is in error.

A. If the Doctrine of Sovereign Immunity Is Not in Issue, the Jurisdiction of the United States District Court Is Clear

The decision of the Court of Appeals in the *Affiliated Ute Citizens* case does not rely specifically upon the doctrine of sovereign immunity in holding that the District Court was without jurisdiction to determine the claims of the mixed-blood members to their *pro rata* share of the minerals underlying the Uintah and Ouray Reservation. If such failure of reliance can be taken as tacit determination that the doctrine is not applicable under the present facts, it is clear that a jurisdictional basis for the claims exists.

In seeking the requested relief, the plaintiffs have relied almost exclusively upon certain provisions in the Ute Termination Act³⁷ and the duties of the Secretary of the Interior pursuant to the Act. Accordingly, an adjudication of the merits of the plaintiffs' claims would require an interpretation of Federal statutory law.

Since it is clear that Federal courts possess the authority necessary to decide all cases arising under and requiring an interpretation of the Constitution and

³⁷ 25 U.S.C. §§ 677-677aa; particularly 25 U.S.C. § 677o.

Federal statutes,³⁸ the necessary subject matter jurisdiction to decide the controversy is present³⁹ under the Federal question jurisdiction of the United States District Courts.

B. If the Court of Appeals Intended To Bar the Petitioners' Claims on the Ground of Sovereign Immunity, It Committed Reversible Error

1. General Equity Jurisdiction

It is important to discuss, at the outset, the defense of sovereign immunity in the context of this litigation. As heretofore pointed out, the United States holds legal title to the entire mineral estate of the Uintah and Ouray Reservation. The Affiliated Ute Citizens case was brought by a number of mixed-blood members of the Ute Indian Tribe seeking a conveyance of legal title to their equitable share of the mineral estate underlying the Reservation. The United States, in its capacity as holder of the legal title to the mineral estate, in effect, has acted in the past and continues to act as trustee on behalf of both the mixed-blood and full-blood Ute Indians for their share of the mineral estate.⁴⁰ Consequently, this case in its most fundamental

³⁸ *Cohens v. Virginia*, 19 U.S. 383, 392 (1821).

³⁹ 28 U.S.C. § 1331. See *Creek Indians National Council v. Sinclair Prairie Oil Co.*, 142 F.2d 842 (10th Cir. 1944); *cert. den.*, 323 U.S. 781 (1944); *McCauley v. Makah Indian Tribe*, 128 F.2d 867 (9th Cir. 1942). See also 28 U.S. § 1362.

⁴⁰ This trust relationship is confirmed by 25 U.S.C. § 677i, which provides, in pertinent part, that certain assets of the Tribe, including the mineral estate, "shall be managed jointly by the Tribal Business Committee and the authorized representatives of the mixed-blood group *subject to such supervision by the Secretary as is otherwise required by law . . .*" (emphasis added). See also 25 U.S.C. § 677o and discussion in Section I-B hereof.

terms, involves an action by the holder of the equitable title to a mineral estate against the holder and trustee of the legal title.

Notwithstanding this direct and intimate legal relationship between the parties, the action below apparently was dismissed on the ground of sovereign immunity. The injustice of this tragic situation brings to mind the words of this Court regarding the defense of sovereign immunity in *United States v. Lee*:⁴¹

It seems to be opposed to all the principles upon which the rights of the citizen, when brought in collision with the acts of the government, must be determined. In such cases there is no safety for the citizen, except in the protection of the judicial tribunals, for rights which have been invaded by the officers of the government, professing to act in its name. There remains to him but the alternative of resistance, which may amount to crime.

Once a trust relationship is established between the United States, as trustee, and a group of Indians, as beneficiaries of the trust, the district courts of the United States are vested with general equity jurisdiction to enforce the terms of the trust.⁴² If such continuing equity jurisdiction of the district courts over trust relationships were to be abrogated by the doctrine of sovereign immunity, the jurisdictional power of the Federal courts would be meaningless and the trust beneficiaries would be forever barred from securing a judicial determination of the rights and responsibilities inherent in the trust relationship.

⁴¹ 106 U.S. 196, 218-219 (1882).

⁴² See, e.g., *Crain v. First National Bank*, 324 F.2d 532 (9th Cir. 1963), n. 6.

In that event, the United States would be free to dissipate the trust *res* and wholly disregard the rights of the trust beneficiaries since it would be completely beyond the scrutiny of the Federal courts. It would thus create the greatest injustices if the United States were allowed to hide behind the iron curtain of sovereign immunity in actions brought by the very individuals whom the Government has a fiduciary obligation to assist and protect. The exercise of the general equity jurisdiction of the district courts would go far toward eliminating the threat of such injustices.

2. 25 U.S.C. § 345

The fund fully concurs in the arguments advanced by petitioners that the necessary subject matter jurisdiction to decide this controversy is possessed by the Federal district courts pursuant to 25 U.S.C. § 345. That section of the United States Code provides, in pertinent part that:

All persons who are in whole or in part of Indian blood or descent. . . . who claim to be . . . entitled to land under any allotment Act *or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any . . . parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress*, may commence and prosecute or defend any action, suit or proceeding in relation to their right thereto in the proper district court of the United States; and said district courts are given jurisdiction to try and determine any action, suit or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty (and in said suit the parties

thereto shall be the claimant as plaintiff and the United States as party defendant) . . . (Emphasis added).

At the outset, it is clear that the final quoted parenthetical phrase of the statute is an express waiver of sovereign immunity, and that the doctrine, therefore, is inapplicable in cases properly brought under the Act.⁴³ The present question, therefore, is whether the claim of the Affiliated Ute Citizens to a *pro rata* share of the minerals underlying the Uintah and Ouray Reservation is properly justiciable under the provisions of 25 U.S.C. § 345.

In denying the jurisdictional basis for such a claim by the Affiliated Ute Citizens, the Court of Appeals relied exclusively upon the determination that the claim was not for an "allotment" or "parcel" of land but, rather, for a "beneficial interest in the oil, gas and minerals" underlying the Reservation. However, by the very nature of the claim filed by plaintiffs in the *Affiliated Ute Citizens* case, it is clear that they are not seeking a "beneficial interest in the oil, gas and minerals", but, rather, a *pro rata* share in the mineral deposits underlying the Reservation.

Such a claim for a *pro rata* share in the mineral assets clearly falls within the provisions of 25 U.S.C. § 345, which creates jurisdiction for claims involving "land . . . under . . . any grant made by Congress . . .". There is nothing in the Act which indicates that it is applicable exclusively to claims for surface rights to land or to traditional Indian "allotments" and, indeed,

⁴³ See *Simmons v. Seelatsee*, 244 F. Supp. 808 (E.D. Wash. 1965); *aff'd per curiam*, 384 U.S. 209 (1966).

several courts have so held.⁴⁴ The minerals sought by plaintiffs in the *Affiliated Ute Citizens* case are no less interests in "land" within the intendment of 25 U.S.C. § 345 than were the construction charges and lien in *Scholder v. United States*,⁴⁵ or the beneficial interests created under an allotment in *United States v. Pierce*.⁴⁶

The error of the Court of Appeals in the present case lies in the fact that it prematurely determined the merits of the claim rather than deciding the jurisdictional issue. The Court mistakenly and prematurely concluded that plaintiffs were entitled to only a "beneficial interest" in certain minerals pursuant to the Termination Act rather than accepting at face value the plaintiffs' allegations claiming entitlement to a *pro rata* share in the entire mineral estate.

The jurisdictional question under 25 U.S.C. § 345, of course, involves a claim for "land" and this is precisely what plaintiffs sought in their complaint.

Accordingly, the Court of Appeals, for purpose of determining the jurisdictional question, committed error in making its determination that plaintiffs were entitled only to a beneficial interest in the mineral estate. Rather, it should have accepted the allegations on the face of the complaint relating to plaintiffs' claim to a share of the mineral estate,⁴⁷ and only then,

⁴⁴ See, e.g., *Scholder v. United States*, 428 F.2d 1123 (9th Cir. 1970), *cert. den.*, 400 U.S. 942 (1970); *United States v. Pierce*, 235 F.2d 885 (9th Cir. 1956); *Gerard v. United States*, 167 F.2d 951 (9th Cir. 1948).

⁴⁵ *Supra*, note 44.

⁴⁶ *Supra*, note 44.

⁴⁷ Such an interest is clearly a claim for "land" in the sense of 25 U.S.C. § 345.

after accepting jurisdiction under 25 U.S.C. § 345, proceeded to a determination on the merits as to plaintiffs' entitlement to a *pro rata* share of the minerals. This procedure is the accepted manner of deciding jurisdictional questions and is set out clearly by the Fifth Circuit in the case of *Carter v. Seamons*:⁴⁸

In order to avoid deciding a case on the merits under the guise of resolving the preliminary jurisdictional issues, the courts have adopted the procedure of accepting at face value, for jurisdictional purposes, the averments of the complaint unless they are so transparently insubstantial or frivolous as to afford no possible basis for jurisdiction, and of giving the averments thus accepted their natural jurisdictional consequences.

Since the claim of the plaintiffs to a *pro rata* share of the mineral estate is patently not frivolous or insubstantial, and since it clearly involves a claim to "land" within the meaning of 25 U.S.C. § 345, the Court of Appeals erred in denying jurisdiction in the *Affiliated Ute Citizens* case.

3. The Administrative Procedure Act

The judicial review provisions of the Administrative Procedure Act⁴⁹ provide a clear jurisdictional basis for the claims presented in the *Affiliated Ute Citizens* case.

With respect to the doctrine of sovereign immunity, the proposition has become firmly established that the Act constitutes a waiver of the defense. The Court of Appeals for the District of Columbia has held in the strongest language that sovereign immunity is not

⁴⁸ 411 F.2d 767, 770 (5th Cir. 1969).

⁴⁹ 5 U.S.C. §§ 701-706.

available when relief is properly sought under the Administrative Procedure Act:

It seems axiomatic to us that one must imply, from a statement of the Congress that judicial review of agency action will be granted, an intention on the part of Congress to waive the right of sovereign immunity; any other construction would make the review provisions illusory.⁵⁰

Moreover, this Court has consistently indicated that the judicial review provisions of the Administrative Procedure Act are to be available "not grudgingly" in order to "serve a broad remedial purpose."⁵¹

Accordingly, since the Administrative Procedure Act provides a waiver of sovereign immunity, the important jurisdictional question in the *Affiliated Ute Citizens* case is whether the review provisions of the Act are applicable under the facts of the case. The Act provides that:

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.⁵²

The agency action by which the plaintiffs are adversely affected and from which they seek review by

⁵⁰ *Scanwell Laboratories, Inc. v. Shaffer*, 424 F.2d 859, 874 (D.C. Cir. 1970). See also *Kletschka v. Driver*, 411 F.2d 436 (2d Cir. 1969); *Estrada v. Ahrens*, 296 F.2d 690 (5th Cir. 1961).

⁵¹ *Data Processing Serv. v. Camp*, 397 U.S. 150, 156 (1970). See also *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967); *Barlow v. Collins*, 397 U.S. 159 (1970); *Tooahnippah v. Hickel*, 397 U.S. 598 (1970).

⁵² 5 U.S.C. § 702

the courts⁵³ is the failure of the Secretary to transfer to the mixed-blood members of the Ute Tribe "unrestricted control of all other property held in trust for such mixed-blood member by the United States,"⁵⁴ including their *pro rata* share of the mineral estate underlying the Reservation.

The validity of the petitioners' claim to a *pro rata* share of the mineral estate is irrelevant to the issue of jurisdiction. The fact remains that there exists a serious question involving the interpretation of 25 U.S.C. § 677o and the distribution of the mineral assets held in beneficial ownership for the mixed-blood members. In this manner, the plaintiffs are adversely affected by the action of the Secretary and a judicial determination of the right to these assets should not be dismissed on a threshold jurisdictional question.

Furthermore, there is nothing in the Administrative Procedure Act which precludes a review of petitioners' claim to their *pro rata* share of the mineral estate. The action of the Secretary in failing to distribute the mineral assets is neither "committed to agency discretion by law,"⁵⁵ nor are there statutes which "preclude judicial review"⁵⁶ of the Secretary's failure to act in accordance with the terms of the Termination Act.

⁵³ While this jurisdictional allegation was not made in the courts below, it is clear that this Court is empowered to make a jurisdictional finding whenever jurisdiction exists.

⁵⁴ 25 U.S.C. § 677o. Such transfer does not remove the trust obligations of the United States to the mixed-blood members which are established by this section and by other provisions of the Act.

⁵⁵ 5 U.S.C. § 701(a)(2).

⁵⁶ 5 U.S.C. § 701(a)(1).

Finally, it is clear that the *inaction* of the Secretary of the Interior in failing to distribute the mineral assets constitutes agency *action* under the judicial review provisions of the Administrative Procedure Act.⁵⁷

Accordingly, it is apparent that the Administrative Procedure Act provides a jurisdictional basis for petitioners' claims to a *pro rata* share of the minerals underlying the Uintah and Ouray Reservation.

CONCLUSION

For the foregoing reasons, the Native American Rights Fund respectfully urges the Court to reverse the decision of the Court of Appeals that the Federal District Court lacked jurisdiction in the *Affiliated Ute Citizens* case. The Fund further urges the Court to reverse the lower Court's determination, in *Reynos v. First Security Bank*, that the United States had no continuing duty or responsibility to the terminated mixed-blood members of the tribe, and to conclude, in lieu thereof, that the mixed-bloods were entitled to full protection under the Termination Act, including the right to exercise the right-of-refusal established in Section 15 of the Act. Assuming these rights are recognized and enforced for the benefit of the mixed-blood members of the tribe, it follows that the action or inaction of representatives of the United States in the enforcement of such rights was negligent and legally irresponsible and that the mixed-blood members are en-

⁵⁷ *Environmental Defense Fund v. Hardin*, 428 F.2d 1093 (D.C. Cir. 1970).

titled to compensation for the damages which resulted from such action.

Respectfully submitted,

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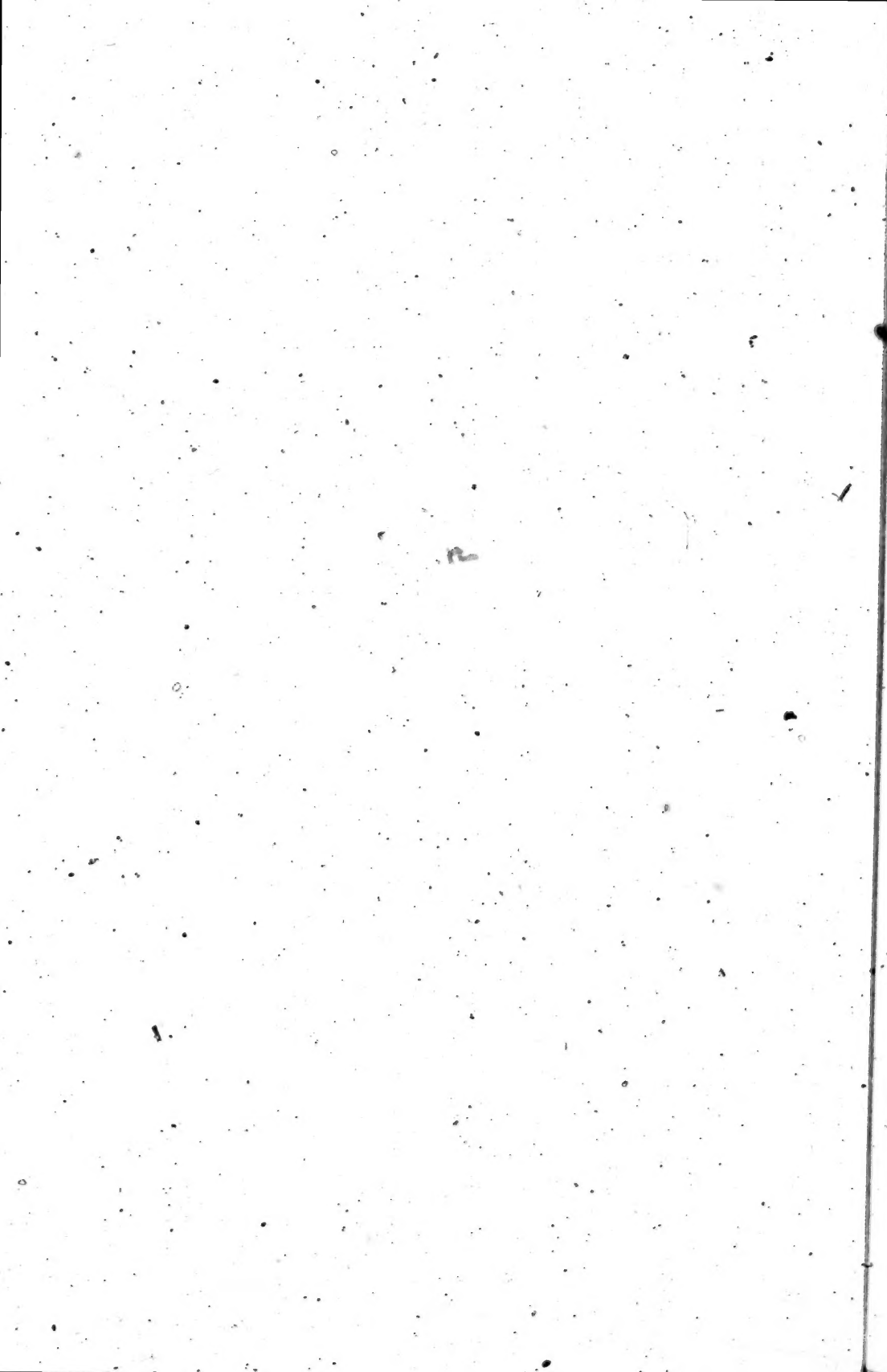
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APPENDIX

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON 25, D.C.

MEMORANDUM

Nov. 30, 1956

To: Commissioner of Indian Affairs

From: Acting Assistant Solicitor, Indian Legal Activities

Subject: Interpretation of the word "tribe" as used within the Act of August 27, 1954 (68 Stat. 868).

You request our interpretation of the word "tribe" as frequently used in the Act of August 27, 1954, P.L. 671, 68 Stat. 868, in view of the provision of section 5 that, after publication of the final roll, the tribe "shall thereafter consist exclusively of full-blood members." You refer to the resolution adopted by the board of directors of the Affiliated Ute Citizens of the State of Utah, which assumes that the Secretary of the Interior's required protection of minor members of the tribe (sec. 22) thereafter applies only to "full-blood members."

You also question the meaning of "tribe" in Section 15, which requires that a mixed-blood member who wishes to dispose of certain property "... shall first offer it to the members of the tribe ...".

"Tribe" is defined as "Ute Indian Tribe of the Uintah and Ouray Reservation, Utah." (Section 2(a)). "Full-blood" means a *member of the tribe* who possesses one-half degree of the Ute Indian blood and a total of Indian blood in excess of one-half, excepting those who become mixed-bloods by choice under the provisions of section 4 hereof." (Section 2(b)). "Mixed-blood" means "a *member of the tribe* who does not possess sufficient Indian or Ute Indian blood to fall within the full-blood class as herein defined, and

those who become mixed-bloods by choice under the provisions of section 4 hereof." (Section 2(c)). (Emphasis added).

Section 8 provides for the roll "of full-blood *members of the tribe*" and for a roll of "the mixed-blood *members of the tribe*." (Emphasis added). After publication of the final rolls, the "mixed-blood" group of Indians are still considered as "members of the tribe" within this definition. For example, section 18 states that "The laws of the United States with respect to probate of wills, determination of heirship, and the administration of estates shall apply to the individual trust property of mixed-blood members of the tribe until Federal supervision is terminated. * * *"

Sections 19, 20 and 21 reserve certain rights and privileges of "the tribe" and "of its members" and clearly refer to all members of "the tribe", and not only to the full-blood organization and its members after publication of the final roll. Section 23 refers to "each individual mixed-blood member of the tribe", and section 24 refers to "the business committee of the tribe representing the full-blood group thereof"; also recognizing that "tribe" refers to both groups. Again, in sections 14 and 15, the Act distinguishes a "member of the mixed-blood group" from "members of the tribe." In fact, throughout there is a considered use of the expressions "members of the tribe", "mixed-blood members of the tribe", and "full-blood members of the tribe", to distinguish the three classes.

The sentence "mixed-blood *members* shall have no interest therein except as otherwise provided in this Act", follows the sentence in section 5, to which you refer, that the "tribe shall consist" exclusively of full-blood members after the tribal *rolls* have been published. In spite of the somewhat confusing language of the first sentence of this section, the second sentence clearly implies that the mixed-blood members continue to have a tribal relationship, i.e., "an interest therein [in the tribe] as * * * provided in this

Act." In fact, this is so. The "full-blood members" are the only persons thereafter recognized on the full-blood tribal roll, but the mixed-blood members of the tribe continue to have tribal membership for certain purposes set forth in the Act. You will also note that the rolls referred to in the first sentence are the rolls "of the full-blood members of the tribe" and of the "*mixed-blood members of the tribe.*"

It seems reasonably sure, therefore, that the word "tribe" as used in sections 15 and 22, and elsewhere throughout the Act, refers to both "full-blood" and "mixed-blood" members, unless specifically limited to one or the other of these classes of tribal members.

FRANKLIN C. SALISBURY
*Acting Assistant Solicitor
Indian Legal Activities*

IN THE

SUPREME COURT OF THE UNITED STATES ,

No. 70-78

AFFILIATED UTE CITIZENS OF THE
STATE OF UTAH, et al,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondents.

ANITA REYOS, et al,

Petitioners,

v.

FIRST SECURITY BANK OF UTAH, N.A.,
UNITED STATES OF AMERICA, JOHN B.
GALE AND VERL HASLEM,

Respondents.

CERTIFICATE OF SERVICE OF BRIEF AMICUS CURIAE
OF NATIVE AMERICAN RIGHTS FUND

I, Wallace L. Duncan, a member of the Bar of the above-
entitled Court, representing the Native American Rights Fund
as Amicus Curiae, do hereby certify that I have served three
copies of the brief for the Native American Rights Fund on
each of the following named attorneys by mail by depositing
the same in a United States post office or mail box with pre-
paid postage addressed to the following counsel at the add-

resses indicated. Copies to those parties residing more than 500 miles from the undersigned were sent air mail, postage prepaid.

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Ute Distribution Corporation and Ute Indian Tribe
of the Uintah and Ouray
Reservations.

Dated this 30th day of August, 1971.


Wallace L. Duncan
A Member of the Bar of the Supreme
Court of the United States

IN THE

AUG 30 1971

Supreme Court of the United States

October Term, 1970

No. 1831

70-78

**AFFILIATED UTE CITIZENS OF THE STATE
OF UTAH, ET AL.,**

Petitioners,

v.

UNITED STATES, ET AL.,

Respondents.

**ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE TENTH CIRCUIT**

**MOTION OF UTE INDIAN TRIBE OF THE
UINTAH AND OURAY RESERVATIONS AND
UTE DISTRIBUTION CORPORATION, A UTAH
CORPORATION, FOR LEAVE TO FILE BRIEF
AMICI CURIAE AND BRIEF AMICI CURIAE**

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IN THE
Supreme Court of the United States

October Term, 1970

No. 1331

**AFFILIATED UTE CITIZENS OF THE STATE
OF UTAH, ET AL.,**

Petitioners,

UNITED STATES, ET AL.,

Respondents.

**ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE TENTH CIRCUIT**

**MOTION OF UTE INDIAN TRIBE OF THE
UINTAH AND OURAY RESERVATION AND
UTE DISTRIBUTION CORPORATION, A UTAH
CORPORATION, FOR LEAVE TO FILE BRIEF
AMICI CURIAE**

Ute Indian Tribe of the Uintah and Ouray Reservation and Ute Distribution hereby respectfully move for leave to file the attached brief amici curiae in this case. The consent of all attorneys for the respondents has been obtained. The consent of the attorney for petitioner was requested and obtained for the Ute Distribution Corporation but denied to counsel for the Ute Indian Tribe.

The interest of the Ute Indian Tribe in this case arises from the fact that said tribe has a majority interest in the net proceeds from all the minerals which are the subject matter of the case of *Affiliated Ute Citizens of the State of Utah v. United States*, and is the owner of 577 shares of the common stock of the Ute Distribution Corporation, which corporation said suit seeks to denude of its powers and assets.

The interest of the Ute Distribution in this case arises from the fact that *Affiliated Ute Citizens of the State of Utah v. United States* seeks to strip said corporation of its powers and assets and seeks to adjudicate rights of mixed-blood Ute Indians who have not disposed of their shares in said corporation and whose interests are adverse to the mixed-blood Ute Indians who have sold their stock in said corporation. The Ute Distribution Corporation is further interested in that said suit endeavors to reactivate the *Affiliated Ute Citizens of the State of Utah* although said organization has fully completed the purposes for which it was organized in relation to all assets of the mixed blood members of the Ute Indian Tribe and has lawfully and irrevocably delegated to the Ute Distribution Corporation the managerial powers and control over all gas, oil and mineral rights of every kind and all other assets not susceptible to equitable or practicable distribution, as defined and determined by the Act of August 27, 1954 (68 Stat. 868).

In the case of *Reynos, et al. v. First Security Bank, (et al.,* petitioner seeks constructions of the Act of August 27, 1954, *supra*, that are vital to the interests of both the Ute Indian Tribe and the Ute Distribution Corporation, but are only incidentally involved in the liability asserted against the defendants in said action in the court below. It is, therefore, believed that the facts as above stated, and the questions of law resulting therefrom, will not be adequately presented by the parties.

Said facts and questions of law are relevant to the disposition of the case in that the Affiliated Ute Citizens of the State of Utah, an unincorporated association, no longer has capacity to institute suit and particularly on behalf of that portion of the 490 mixed-blood Ute Indians who have not disposed of their stock in the Ute Distribution Corporation and whose interests are contrary to the interests of those who have sold their stock in said corporation; and that said facts establish that the complaint fails to state a claim upon which relief can be granted; and that the Ute Indian Tribe and the Ute Distribution Corporation were indispensable parties to the action and were not properly joined; and that in the case of *Reynos, et al. v. First Security Bank, et al.* proper disposition may be made by the court without doing violence to the rights of the Ute Indian Tribe and the Ute Distribution Corporation.

It's further believed that the brief submitted herewith, for which permission to file is requested, will contain a

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more complete argument in relation to the matters of primary concern to said tribe and corporation.

Dated this 27th day of August, 1971.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, JOHN S. BOYDEN, a member of the Bar of this Court, hereby certify that on the 27th day of August, 1971 I mailed a copy of the foregoing Motion of the Ute Indian Tribe of the Uintah and Ouray Reservation and Ute Distribution corporation, a Utah Corporation, For Leave to File Brief Amici Curiae to the Solicitor General of the United States, Department of Justice, Washington, D. C. 20530, air mail, postage prepaid, and a copy to each of the following attorneys first class mail, postage prepaid:

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In The
Supreme Court of the United States

October Term, 1970

No. 1331

**AFFILIATED UTE CITIZENS OF THE STATE
OF UTAH, ET AL.,**

Petitioners,

v.

UNITED STATES, ET AL.,

Respondents.

**ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE TENTH CIRCUIT**

**BRIEF OF THE INDIAN TRIBE OF THE
UINTAH AND OURAY RESERVATION AND
UTE DISTRIBUTION CORPORATION, A UTAH
CORPORATION, AS AMICI CURIAE**

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UTAH CORPORATION, AS AMICI CURIAE**

I

INTEREST OF AMICI CURIAE

**A. INTEREST OF UTE INDIAN TRIBE OF
UINTAH OURAY RESERVATION.**

The Ute Indian Tribe of the Uintah and Ouray Reservation, Utah (hereinafter referred to as "Ute Tribe"), is an Indian Tribe organized under and by virtue of the Act of June 18, 1934 (48 Stat. 984), as amended, whose members are defined in the Act of August 27, 1954 (68 stat. 868) as

being "full blood," together with such other members who have been duly placed upon the rolls of said tribe pursuant to said act as amended by the Act of August 2, 1956 (70 Stat. 936), and the constitution and bylaws of the tribe, and ordinances enacted thereunder.

The interest of the Ute Tribe in this case arises from the fact that said tribe is entitled to 72.83814% of the net proceeds from all of the gas, oil and mineral rights of every kind and all other assets not susceptible to equitable and practicable distribution as defined in the Act of August 27, 1954, *supra*, title to said minerals being in the United States in trust for the Ute Indian Tribe of the Uintah and Ouray Reservation subject to the provisions of said act. The case of *Affiliated Ute Citizens of the State of Utah v. United States* (hereinafter referred to as the "AUC Case") seeks an order of the court distributing an undivided 27.1686% of the mineral estate underlying the Uintah and Ouray Reservation to the terminated individual mixed blood members, pro rata. (Pet. App. 539). Since the mixed blood proportionate interest in the assets of the reservation was 27.16186%, it is assumed that the figures contained in the complaint and proposed amended complaint (Pet. App. 567) differ because of typographical errors. In petitioner's motion for a rehearing before the United States District Court for the District of Utah, Central Division, petitioner sought the joint management with the Ute Tribe to be restored to an organization with the arrogated title of *Affiliated Ute Citizens of the State of Utah* (hereinafter referred to as "AUC"), notwithstanding the fact that the mixed-blood members of the tribe through the AUC had irrevocably delegated such authority to the Ute Distribution Corporation, a Utah corporation (hereinafter referred

to as "UDC"). Such a change of management is of vital concern to the Ute Tribe since the tribe has purchased through the years 577 shares of common stock of UDC and resents being robbed of its voice as a shareholder in UDC. Should the prayer of petitioner's complaint be granted, the heirship problem thus created would dwarf the Indian allotment heirship problems which have plagued not only the Ute Tribe, but other tribes and the United States for so many years. Further, a transfer of management would cast a cloud upon the many mineral, gas and oil leases now in operation and effect upon the reservation. The income from these leases constitutes a major portion of the income of the tribe and UDC. The UDC was established, pursuant to federal and state law as hereinafter described, for the purpose of receiving such income. AUC's frontal attack on the legality of the UDC organization and disruption of present management is made in an action to which the UDC and Ute Indian Tribe are not parties. Tribal immunity from suit may well prevent the tribe from being joined as a party.

B. INTEREST OF THE UTE DISTRIBUTION CORPORATION, A UTAH CORPORATION.

The UDC is a Utah corporation organized by the mixed-blood or terminated Ute Indians at meetings properly called for that purpose. The corporation was specifically authorized by the Act of August 27, 1954, *supra*, Section 13(3).

The interest of UDC in this case arises from the fact that the purported organization of AUC seeks to strip UDC of its powers and assets and seeks to adjudicate rights of mixed-blood Ute Indians who have not disposed of their

shares in said corporation and whose interests are adverse to the mixed-blood Ute Indians who have sold their stock in said corporation. UDC is further interested in that petitioner in said *AUC Case* endeavors to reactivate the AUC although said organization has fully completed the purposes for which it was organized relating to all assets of the mixed-blood members of the Ute Tribe and has fully, lawfully and irrevocably delegated to UDC the managerial powers and control over all gas, oil and mineral rights of any kind, and all other assets not susceptible to equitable and practicable distribution as defined and determined by the Act of August 27, 1954, *supra*.

C. COMMON INTEREST OF THE UTE INDIAN TRIBE AND THE UTE DISTRIBUTION CORPORATION.

Both amici curiae are interested to see that proper disposition is made of *Reynos, et al. v. First Security Bank, et al.* (hereinafter referred to as "Reynos") without doing violence to the rights of the Ute Tribe and UDC.

Negligence of the United States cannot be inferred from its approval of the creation of UDC as authorized by law, and there is no necessity to consider whether mixed-blood members ceased to be members of the Ute Tribe upon termination since the matter of offering to sell stock to the terminated mixed-blood members of the tribe is provided in the Articles of Incorporation of UDC.

ARGUMENT

A. THE COMPLAINT IN *AFFILIATED UTE CITIZENS OF UTAH V. UNITED STATES* FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

The Act of August 27, 1954, *supra*, provided in Section 13(3):

When, in the opinion of said mixed-blood group, it is to the best interest of said group to transfer a portion of the assets of said group to a corporation or other legal entity *for any purpose*, the Secretary is authorized to make such transfer. (Emphasis added). (App. of Pet. Stat. & Reg., Pet. Br. p. xi).

Said act further provided in Section 10 thereof:

All unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall be managed jointly by the Tribal Business Committee and the authorized representatives of the mixed-blood group, subject to such supervision by the Secretary as is otherwise required by law, and the net proceeds therefrom after deducting the costs chargeable to such management shall first be divided between the full-blood and mixed-blood groups in direct proportion to the number of persons comprising the final membership roll of each group and without regard to the number of persons comprising each group at the time of the division of such proceeds.

(App. of Pet. Stat & Reg., Pet. Br. (p. vii).

It will be noted that the mineral rights were not to be distributed, but were to be managed by both groups jointly, *subject to such supervision by the Secretary as is otherwise required by law*, and only the net proceeds distributed. The title to such minerals, therefore, remained in the United States in trust for the Ute Tribe, but subject to management and distribution of proceeds as provided by the act.

The Plan for Distribution of the Assets of the Individual Mixed-Blood Members was prepared and ratified by a majority of that group and submitted to, and approved by, the Secretary of the Interior. The Plan with reference to the intended formation of the UDC was clear and unequivocal. Pages 140 and 141 of petitioners' Appendix — Exhibits bearing on this crucial issue are illegible on the copies made available to the Ute Tribe and the UDC. Since this portion of the plan is so determinative of the true facts and because we desire to insure the availability of Section VII to this court, we have reproduced the complete section in the appendix to this brief. (App. i). We here quote a pertinent portion from Section VII:

It is proposed that a corporation be formed under the laws of the State of Utah to receive all income belonging to the mixed-blood group from the theretofore unadjudicated or unliquidated claims against the United States, all income from oil, gas and mineral rights of every kind and from all other assets not susceptible to equitable or practicable distribution Each person included upon the final mixed-blood roll as provided in Section 8 of the Act will be issued ten shares of stock in said corporation. The stock of the corporation will be subject to transfer, devise or descent. Officers of the corporation will be delegated authority from the stockholders for participation in the joint management of such assets from which the corporate in-

come is derived, with the Tribal Business Committee of the full-blood group. The powers of the corporation shall be limited to distribution of said assets and the powers necessarily incident thereto.

Delegation of management powers by the original stockholders will provide a means of restricting the management to the interested parties. Thus, if a mixed-blood member disposes of his stock he will no longer have a voice in naming the mixed-blood delegates to act with the Business Committee of the full-blood Indians. Conversely, transferees, legatees and heirs will acquire a voice in such management as their interests are acquired.

(App. i, ii).

The then proposed Constitution and Bylaws of the AUC, attached to and made a part of the plan so submitted, empowered the officers of the proposed organization to:

irrevocably delegate to corporations or the officers thereof, organized pursuant to and in accordance with Public Law 671, 83rd Congress, 2d session (68 Stat. 868), to receive, manage, distribute or otherwise handle assests of the mixed-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation, such powers and authority as may be necessary or desirable in the accomplishment of the objects and purposes for which said corporation may be so organized.

(Art. V. §1 (b), Pet. App. — Ex. p. 155).

The officers of the AUC, in accordance with their authority, did irrevocably delegate to the UDC all their powers relative to the subject matter of this suit, and at general meetings of AUC authorized certain of their members to incorporate the UDC with a preamble to its Articles reciting:

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned mixed-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, as determined by Public Law 671 — 83rd Congress, approved August 27, 1954, 68 Stat. 868, acting pursuant to the provisions of said Public Law 671, as amended, and in accordance with the Plan for Distribution of the Assets of the Individual Mixed-Blood members of said Tribe, as adopted by said mixed-blood members and approved by the Secretary of the Interior, and pursuant to a resolution adopted by said mixed-blood members, and being desirous of organizing a corporation under the laws of the State of Utah on behalf of said mixed-blood members for the purpose of managing jointly with the Tribal Business Committee of the full-blood group of said Indian Tribe, as provided in said Public Law 671, all unadjudicated or unliquidated claims against the United States, all gas, oil and mineral rights of every kind, and all other assets not susceptible to equitable and practical distribution between said mixed-blood and full-blood groups and the members thereof, and for the purpose of distributing the net proceeds therefrom, do agree and hereby certify as follows:

(Pet. App. — Ex. pp. 2, 3).

The purpose of UDC was again explicitly stated in Article IV of the Articles of Incorporation:

The pursuit or business which it is agreed shall be carried on by this corporation shall be to manage jointly with the Tribal Business Committee of the full-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, pursuant to said Public Law 671, as amended, the aforesaid Plan for Distribution, all unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution to which the mixed-blood members of

the said tribe, as defined and determined by said Public Law 671, are now, or may hereafter become entitled pursuant to said Public Law 671 or the laws of the United States and to receive the proceeds therefrom and to distribute the same to the stockholders of this corporation as herein provided.

The powers of this corporation shall be limited to the joint management of such claims and assets and to the receipt and distribution of the income or proceeds therefrom together with such other powers as may necessarily be incident thereto. For the purpose of carrying any of its pursuits, business and powers, this corporation may contract with other individuals, organizations, corporations or entities.

(Pet. App. Ex. pp. 3, 4).

The subscribers of the stock of UDC, consisting of all 490 mixed-blood members whose names appeared on the final roll, each received 10 shares of the common stock of the corporation. Article VI of the Articles of Incorporation of UDC provides:

The stockholders in exchange for their stock delegate to the corporation and the officers thereof, *without further act or deed*, authority to manage jointly with the Tribal Business Committee of the full-blood group of said Ute Indian Tribe all unadjudicated or unliquidated claims against the United States, all gas, oil and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution under said Public Law 671, in which said mixed-blood members have any interest, and to receive the proceeds therefrom and to distribute the same, less any necessary or incidental expense, to the stockholders hereof.

(Emphasis added). (Pet. App. — Ex. pp. 4, 5).

Petitioner complains that UDC was not formed pursuant to a "constitution and bylaws" nor was it "ratified by a majority vote of the adult mixed-blood members of the tribe at a special election authorized and called by the Secretary." (App. Br. 7).

The meeting adopting the Articles of Incorporation of UDC was a special meeting of AUC. (Pet. App. — Ex. 18). The authority of the AUC organization to act is not questioned by petitioners. The petitioners in AUC base their standing or authority to bring the AUC suit upon the Constitution and Bylaws of AUC. (Pet. App. — Ex. 151-162). The bylaws of that organization provided for special meetings of the general membership. (Art. III, §2, Pet. App. — Ex. 10). Article III, Section 4 of the same bylaws defines a quorum as follows:

A quorum of a general membership meeting shall consist of not less than thirty voters at the annual meeting and twenty-five voters at a special meeting. A quorum of the Board of Directors shall consist of three members of the Board of Directors.

(Pet. App. — Ex. 11).

Forty-two mixed bloods at the meeting voted for the resolution accepting the UDC Articles of Incorporation, with only 5 voting against. There is no indication as to whether others were present and not voting. The voting members numbered nearly twice the requirement for a quorum at a special meeting, and the majority in favor was over 8 to 1. This was the action of the AUC organization, which organization petitioners contend was "[a]n approved organization that had been effected prior to that date [the date of the adoption of the resolution]." (Pet. Br. 7, Note (9)).

No derogatory inference can be made from petitioner's statement, "UDC was formed by 5 incorporators" (App. Br. p. 7). The laws of the State of Utah at that time provided, "The number of incorporators shall be not less than five." (App. iii).

Even if this state of facts did not exist, every member accepted the benefits of the stock and the complaining members sold stock for a consideration, adequate or otherwise, knowing from the public record that in exchange for their stock they had delegated to the UDC authority to manage and distribute the proceeds from the mineral estate.

The stock of the corporation was subject to transfer and the consequences of sale were made a part of that same public record when the Articles were filed with the Secretary of State of the State of Utah. The last paragraph of Article VI of the Articles of Incorporation of the UDC states:

The stock of the corporation is subject to transfer, devise or descent. If a mixed-blood member of said tribe, or any stockholder herein disposes of his stock, he will no longer have a vote or any control in the affairs of the corporation, or be entitled to share in the distribution of the proceeds as hereinbefore provided, unless and until he thereafter again becomes a stockholder in the corporation. Transferees, legatees, and heirs of any stock in the corporation shall acquire all rights to which a stockholder is entitled, including voting rights and the right to share in the distribution of the income or proceeds available for such distribution.

(Pet. App. — Ex. p. 5).

A rump revival of an association that has thus divested itself of all title and authority regarding the proceeds from the minerals of the reservation neither obligates those mixed-bloods who have retained their stock in UDC to attend such meeting nor requires mixed-blood UDC stockholders to join the filing of a suit by those who have supped at the table of UDC and now seek to have the cake they have already eaten.

Equity does not require that present mixed-blood holders of UDC stock cause the revenues they are now receiving to be subject to contingent attorneys fees, nor have their interest jeopardized by the clouding of present tribal and UDC leases from which their dividends now emanate. Complicated heirship problems avoided by the ready transfer, descent or bequeathing of shares and joint management by a business corporation under state law are choices that were deliberately made by the mixed-bloods themselves as herein before outlined.

The statement that "BIA caused UDC to be formed" (Pet. Br. 7), is erroneous under this state of facts. To say that AUC "was ignored, although AUC never purported to delegate its powers to act as authorized representative" (Pet. Br. 7), simply ignores the obvious.

The presumptuous use of the name, Affiliated Ute Citizens of the State of Utah, in a suit the subject matter of which said organization no longer has an interest is not the suit of 490 original mixed-blood Indians. Counsel for petitioners cannot legitimately contend that he now represents the AUC as authorized by the Act of August 27, 1954 and as approved by the Secretary of the Interior under Section 6 thereof. The mixed-bloods who have retained

their stock have a right to speak for themselves and the officers of UDC, who still consist exclusively of mixed-bloods, have instructed their authorized legal counsel to file this brief.

The Ute Tribe that has become the owner of 577 shares in UDC through purchase under the provisions of the termination act has likewise instructed its legal counsel, who has served them for some 25 years, to bring to the attention of this honorable court this sequence of events set out in the documents now before the court. Petitioners fail to distinguish the right to net proceeds derived from the minerals underlying the reservation from the minerals *per se*. If the mixed-bloods had not delegated to UDC authority to manage and to distribute the net proceeds, their interest would still be in the management and in the proceeds. There is no statutory authorization for conveyance of the minerals now held in trust by the United States for the Ute Indian Tribe.

The ACU complaint, as filed, or as proposed by amendment, fails to state a claim upon which relief can be granted, viz:

(a) The Act of August 27, 1954, *supra*, must be construed as a whole and the relief sought in the *AUC Case* is contrary to express provisions of the statute.

(b) The UDC is the authorized representative to manage and distribute the mixed-blood interest in the net proceeds from the reservation minerals.

**B. THE COURT LACKS JURISDICTION
OVER THE SUBJECT MATTER OF THE
ACTION IN THE AUC CASE.**

While it is believed that the United States as defendant in the *AUC Case* will respond to the dispositive jurisdictional question as above stated and now before the court, the Ute Tribe and UDC, in order to insure an adequate response, desire to briefly state their position. The jurisdiction of the Federal District Court over the subject matter of the *AUC Case* was alleged by petitioner in the trial court and Court of Appeals to have had basis in 25 U.S.C. 345, 28 U.S.C. 1399, and 28 U.S.C. 2409. Apparently petitioner has abandoned its contention that 28 U.S.C. 1399 and 28 U.S.C. 2409 confer jurisdiction on the court since said statutes are not mentioned in petitioner's brief and were summarily held inapplicable by the trial court and the Court of Appeals on the ground that said statutes require an ownership wherein in the United States is a joint tenant or tenant in common with the party seeking relief.

If jurisdiction is to exist, it must be found within the provisions of 25 U.S.C. 345. While the Ute Tribe and UDC recognize the broad principles of statutory construction in favor of Indians as enunciated in *Choate v. Trapp*, 224 U.S. 665 (1912), and its progeny, there is no justification for construing the word "allotment" beyond the precise meaning carefully laid down by over a century of congressional enactments and case law. See United States Department of Interior, *Federal Indian Law* (1958), Schap. IX-C, pp. 773-818. The word "allotment" has become a word of art with specific meaning in relation to Indians. Further, the liberal construction of statutes involving Indians cited by petitioner cannot be applied by one group of terminated

Indians against two other groups of Indians — terminated mixed-bloods and an organized tribe. The interest of the entire membership of the Ute Tribe and mixed-blood stockholders in UDC cannot be subordinated to the interests of a select group of mixed-bloods who now desire to wrest control from UDC. There are no cases favoring one group of Indians against another. *McKay v. Klayton*, 204 U.S. 456, 459 (1907), is of no assistance in this case since it involved a tract of land in the Umatilla Reservation which had been duly allotted to a member of the tribe in 1899. The decision of the court below is correct in finding that the ownership to individual Indian allotments is not at stake in this case and the decision of *Naganab v. Hitchcock*, 202 U.S. 473 (1906), is controlling.

Petitioner's selected wording from §345 "excluded from any parcel of land to which they claim to be lawfully entitled" purportedly provides a catch-all consent to jurisdiction "not along the formalistic lines of whether a particular grant is denominated an allotment." (Pet. Br. 41). Petitioner uses as authority *United States v. Pierce*, 235 F.2d 885 (9th Cir. 1956). Additionally, *Scholder v. United States*, 428 F.2d 1123 (2nd Cir. 1970), *cert. den.* 400 U.S. 942 (1970), is used as authority for broad usage of the jurisdictional statute to matters "merely collateral to an Indian allotment." A careful reading of the *Scholder Case* reveals that the jurisdiction in both the *Scholder* and *Pierces Cases* is based upon the denial of a right acquired appurtenant to an "allotment" in the "formalistic" and traditional sense. The plaintiff in the *Scholder Case*, in addition to his claim concerning a pro rata cost incurred in building an irrigation lateral on his Indian allotment, asked the court to consider claims against the United States and

the Department of Interior, challenging the expenditure of funds for the Indian irrigation system, claiming an unconstitutional taking, conversion, abuse of discretion, breach of fiduciary duty, and a payment not authorized by Congress. With regard to these claims, the court said:

These appellants are not claiming denial of a right acquired appurtenant to their allotment. They are challenging the Bureau's administration of an Indian irrigation system. We cannot fairly say that one's right to an allotment includes as an incident of that right a guarantee of judicious administration of an irrigation project. The consent given in section 345 does not encompass appellants' challenge to the expenditure, and the district court properly dismissed the individual appellants' first set of claims against the United States.

(*Scholder, supra* at pp. 1126, 1127).

In *United States v. Preston*, 352 F.2d 352, 357 (9th Cir. 1965), the court volunteered the following concerning §345:

We think it is equally plain that the Indian allottee is not authorized by Section 345 to sue the United States for the purpose of claiming or establishing any assignment or distribution of water rights, rights which he automatically acquired as result of the creation of the reservation

The nature of the interest sought to be protected by petitioner in this action does not fall within the purview of 25 U.S.C. 345, and the court is without jurisdiction of this action.

C. *IN REYOS, ET. AL. V. UNITED STATES, ET. AL.* THE PETITIONER SEEKS IMPROPER STATUTORY CONSTRUCTION AFFECTING THE VITAL INTERESTS OF BOTH THE UTE TRIBE AND UDC.

The argument of petitioners in *Reynos*, with reference to the alleged neglect of the United States, assumes that Congress directed that the minerals "be not partioned [sic] to Corporations." (Pet. Br. 36). Whether petitioners meant portioned or partitioned, the interests of the Tribe and of UDC require a more accurate consideration. Congress authorized the transfer of a portion of the assets of the mixed-bloods to a corporation or other legal entity for any purpose, when in the opinion of the mixed group it was to their best interest. [68 Stat. 868, 875, Sec. 13(3)]. The proceeds from the minerals are certainly assets, and the B.I.A. did not circumvent the statute when it approved the action of the mixed-bloods in forming UDC as authorized by the termination act. We deem it unnecessary to repeat the procedpres which legally vested in UDC the right to manage, with the Ute Tribe, the mineral estate of the reservation. Neither the Ute Tribe nor the UDC desires to detract from whatever protection petitioners are entitled to by reason of being terminated, mixed-blood Indians, but when they demand preferential treatment as "the Indians" in direct opposition to the legal rights of their Indian brothers, we find no case supporting such a theory. The Court of Appeals reversed no historic policy as contended by petitioner (Pet. Br. 37) when it construed the termination statute to authorize the powers and functions of UDC.

At pages 48-50 of their brief, petitioners now seek to have this court review the case of *Ute Indian Tribe v. Probst* [428 F.2d 491 (10th Cir. 1970), *cert. den* 400 U.S. 926 (1970)]. The Ute Tribe deems it inappropriate to again present its position in relation to the statutory requirement of "offer to members of the tribe" which is now a moot question. Its argument is set out in the Brief of Respondent, Ute Indian Tribe of the Uintah and Ouray Reservation, in opposition to the petitioners for a writ in said case, Supreme Court Docket No. 638, 637. The adequacy of the record is apparent from the argument of counsel in that case.

UDC asserts that the *Probst Case* is inapplicable since that case involved the surface rights of real estate and required the court to determine whether mixed-blood members ceased to be members of the Ute Tribe when the final rolls were published in the Federal Register, 68 Stat. 868, Sec. 5. In the case at bar, the Articles of Incorporation of UDC require the offer to be made to the mixed-bloods, Article VIII. (Pet. App. — Ex. p. 6). Only if petitioners are successful in eliminating UDC do they encounter the membership question.

III

CONCLUSION

1. The complaint in the *AUC Case* fails to state a claim upon which relief can be granted.
2. The court lacks jurisdiction over the subject matter of the action in the *AUC Case*.
3. The UDC is the authorized representative to manage and distribute the mixed-blood interest in the net proceeds from reservation minerals.

4. Petitioners in the *Reynos Case* seek improper statutory construction to destroy the UDC, praying for preferential treatment as between Indians and reviving a moot question irrelevant to the case at bar.

For the reasons stated it is respectfully submitted that the judgment of the court below should be affirmed.

DATED this 27th day of August 1971.

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APPENDIX

PLAN FOR DISTRIBUTION

of the

ASSETS OF THE INDIVIDUAL MIXED-BLOOD
MEMBERS OF THE UTE INDIAN TRIBE,
UINTAH AND OURAY RESERVATION, UTAH
PURSUANT TO PUBLIC LAW 671
83rd CONGRESS-2nd SESSION (68 STAT..868).

PART VII ONLY.

*VII. Assets Not Susceptible to Equitable and Practicable
Distribution.*

Section 10 of the Act further provides, as follows:

Sec. 10 All unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall be managed jointly by the Tribal Business Committee and the authorized representatives of the mixed-blood group, subject to such supervision by the Secretary as is otherwise required by law, and the net proceeds therefrom after deducting the costs chargeable to such management shall first be divided between the full-blood and mixed-blood groups in direct proportion to the number of persons comprising the final membership roll of each group and without regard to the number of persons comprising each group at the time of the division of such proceeds.

It is proposed that a corporation be formed under the laws of the State of Utah to receive all income belonging to the mixed-blood group from the theretofore unadjudicated or unliquidated claims against the United States, all income

from oil, gas and mineral rights of every kind and from all other assets not susceptible to equitable or practicable distribution. This corporation shall be organized not for purposes of profit, but shall be incorporated with a view of complying with the tax exemption provisions of State and Federal law with the major purpose of distributing to its stockholders the net revenues from such sources. Each person included upon the final mixed-blood roll as provided in Section 8 of the Act will be issued ten shares of stock in said corporation. The stock of the corporation will be subject to transfer, devise or descent. Officers of the corporation will be delegated authority from the stockholders for participation in the joint management of such assets from which the corporate income is derived, with the Tribal Business Committee of the full-blood group. The powers of the corporation shall be limited to distribution of said assets and the powers necessarily incident thereto.

Delegation of management powers by the original stockholders will provide a means of restricting the management to the interested parties. Thus, if a mixed-blood member disposes of his stock he will no longer have a voice in naming the mixed-blood delegates to act with the Business Committee of the full-blood Indians. Conversely, transferees, legatees and heirs will acquire a voice in such management as their interests are acquired.

UTAH CORPORATION STATUTE

Utah Code Annotated 18-2-3 (1943). Incorporators —
Number and Residence — Name.

The number of incorporators shall be not less than five, one of whom must be a resident of this state. No corporation shall take the name of a corporation theretofore organized under the laws of this state, or of a foreign corporation that has complied with laws of this state so as to entitle it to do business within this state, nor one so nearly resembling the name of any such corporation as to be misleading. The secretary of state may refuse to issue a certificate of incorporation to any association violating the provisions of this section.

CERTIFICATE OF SERVICE

I, JOHN S. BOYDEN, a member of the Bar of this Court, hereby certify that on the 27th day of August 1971 I mailed a copy of the Brief Amici Curiae of the Ute Indian Tribe of Uintah and Ouray Reservation and Ute Distribution Corporation, a Utah Corporation, to the Solicitor General of the United States, Department of Justice, Washington, D.C. 20530, air mail, postage prepaid, and a copy to each of the following attorneys, first class mail, postage prepaid:

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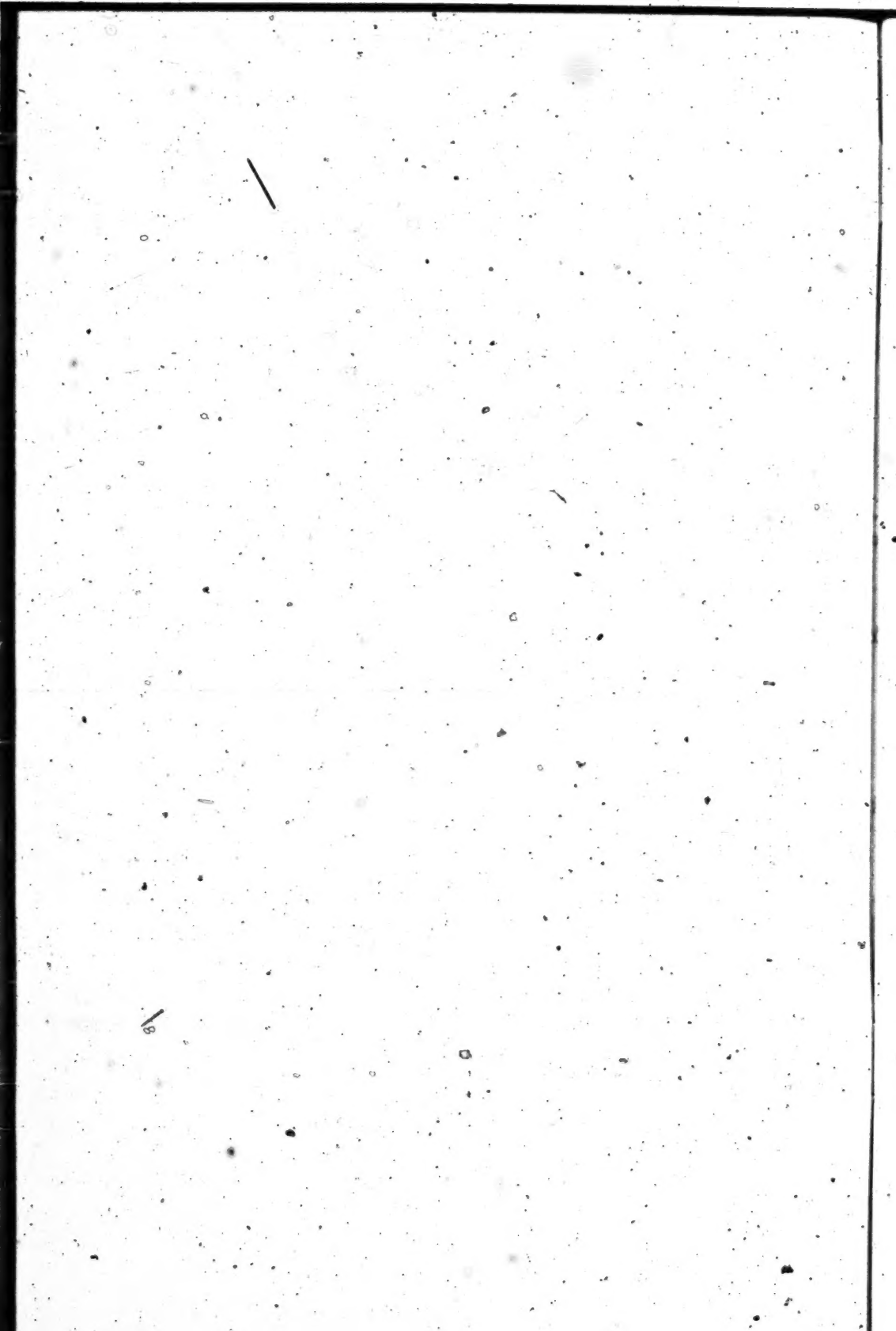
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In the Supreme Court of the United States

OCTOBER TERM 1970

No. 1331

AFFILIATED UTE CITIZENS OF THE
STATE OF UTAH, et al,

Petitioners,

vs.

UNITED STATES, et al,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR RESPONDENT
First Security Bank of Utah, N. A.

STATEMENT OF THE CASE

This petition involves a suit by twelve "mixed blood" members of the Ute Indian Tribe against First Security Bank of Utah, N. A., charging violation of Regulation 10b-5 (17 C.F.R. 240 10b-5), promulgated under Section 10(b) of the Securities Exchange Act

of 1934 (15 U.S.C. 78(j)). The petition is from a judgment of the Court of Appeals of the Tenth Circuit reversing a judgment by the trial court in favor of the petitioners.

Eighty-five "mixed blood" members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, brought suit against the United States of America, First Security Bank of Utah, N.A., John B. Gale, Verl Haslem and several used car dealers. The used car dealers eventually settled and were dismissed from the action. The Court and counsel agreed that twelve "bellweather" plaintiffs would be selected or designated and their cases tried first.

There were four hundred ninety mixed bloods in the Tribe. Each was issued ten shares of the capital stock of the Ute Distribution Corporation (a Utah corporation created under the supervision of the Department of Interior) representing his interest in "unadjudicated or unliquidated claims against the United States, all gas, oil and mineral rights of every kind and all other assets not susceptible to equitable and practicable distribution to which the mixed blood members of the Tribe, as determined by Public Law 671, are now or may hereafter become entitled. . . ." (A. 465). Only eighty-five mixed bloods brought this suit and the rights of only twelve of the eight-five are being adjudicated on this appeal.

Defendant First Security Bank of Utah, N.A., hereinafter referred to as the "Bank", by written contract with the Ute Distribution Corporation, Pl. Ex. 18, (E.13) became the transfer agent, depository, bookkeeper and dividend distributor for that corporation.

Defendants John Gale and Verl Haslem, hereinafter referred to as "Gale" and "Haslem", were Assistant Managers of the Roosevelt, Utah office of the Bank.

Section VIII of the Articles of Incorporation of the Ute Distribution Corporation provided that no sale of any stock of the corporation prior to August 27, 1964, would be valid unless offered first to members of the Tribe in a form to be approved by the Secretary of Interior. It was further provided that if such offer of sale was not accepted by any member of the Tribe, the sale thereof could then be made to a nonmember, but only for the same or greater amount and upon the same terms and conditions upon which it had been offered to the Tribe members, and providing the Superintendent of the Reservation certified that the offer had been made to the Tribe in accordance with law and the regulations of the Secretary of Interior (A. 465, 66).

Sales made after August 27, 1964, were subject to no such limitations and were free to be bought and sold the same as any other unrestricted corporate shares (A. 466).

To implement the provision of Article VIII of the Articles of Incorporation, the Bank recommended a procedure designed to protect the mixed bloods and the Tribe in connection with the pre-August 27 sales. In substance it provided that the mixed blood must (1) post an offer of sale to the Tribe at a specific price per share for a period of thirty days; (2) if there were no takers, he could openly negotiate for the sale to a nonmember and sign an affidavit to the effect that he had received the same amount that he had posted it for; (3) sign a stock power with signature guaranteed

authorizing the Bank to transfer his stock; (4) submit the affidavit and stock power to the Superintendent of the Uintah and Ouray Reservation for his examination and certification as to compliance with the required procedure; (5) after the Superintendent satisfied himself as to the regularity of the transaction, he was to submit a written certification of compliance to the Bank; and (6) the Bank was then required to transfer the stock to the Buyer (Pl. Ex. 45) (E. 29) (A. 286).

The recommendations made by the Bank for the protection of the mixed bloods was approved and adopted by the Secretary of Interior in accordance with Article VIII of the Articles of Incorporation of the Ute Distribution Corporation. The plan had the approval of the Ute Distribution Corporation and the Superintendent of the Reservation (A. 286).

The provision for the signing of stock powers or authorizations to transfer was adopted instead of endorsement on the certificate itself because the officers of the Ute Distribution Corporation and the Secretary of Interior, through his agent, the Superintendent of the Reservation, believed it would be beneficial to the Indians to have the Bank hold the certificates rather than the mixed bloods themselves, because of the fear that some of them would lose their certificates (A. 340, 287, 294). Consequently, the Bank, as transfer agent, held the certificates pursuant to the instructions from the Ute Distribution Corporation, with whom it had the contract to serve as transfer agent.

Most of the mixed bloods lived in the Uintah Basin near Roosevelt, Utah. The Bank made its Roosevelt office available for use by the mixed bloods in the event

they wanted to have their stock transfer authorization signatures guaranteed there and their affidavits notarized. The Roosevelt office did not handle the transfers. There were handled by the Trust Department office of the Bank in Salt Lake City where the transfer books and the stock certificates were held. (A. 275, 276).

Because the Bank made this assistance available to the mixed bloods, some of them came into the Bank, signed the stock powers before defendant Gale, who was authorized to guarantee signatures, and he, being a notary, notarized many of the affidavits, which were then sent to the Superintendent for examination. After examination of the stock powers and affidavits by the Superintendent, the Superintendent sent his certification to the Trust Department of the Bank in Salt Lake and the stock was transferred (A. 295).

With respect to sales made prior to August 27, 1964, no shares were transferred by the Bank until the Bank had received written certification from the Superintendent to the effect that the offer to the members of the Tribe had been made in accordance with law and the regulations of the Secretary of Interior, and that the Superintendent had on file the requisite affidavit evidencing the receipt by the mixed blood of the price for which the stock had been posted. (A. 295, 517, 518, 475, 479, 480, 482, 483, 485, 488, 490, 491, 492, 493, 495, 496, 497.)

During 1963-64 mixed bloods sold 1,387 shares to white men (A. 523). No shares were bought by members of the Tribe. Of these shares, only fifty were bought by Verl Haslem, and all of those were purchased after August 27, 1964. Only sixty-three shares were bought

by Gale (forty-four prior to August 27, and nineteen after). Out of the 1,387 shares sold by mixed bloods to white men, Gale and Haslem together bought only one hundred thirteen shares or 8 1-3% of the shares sold. Of the one hundred twenty shares sold by the twelve bellwether plaintiffs, Gale purchased ten (five from Glen Reed and five from Wopsock) and Haslem purchased six (five from Glen Reed and one from Arthur Workman). There were thirty-two other white men who bought directly from mixed bloods during 1963 and 1964 (A. 523); Gale and Haslem paid cash for each of the shares they purchased (A. 475, 476, 479, 480, 490). With regard to those shares purchased by Gale prior to August 27, 1964, he paid as much or more than the stock was posted for and on the same terms, so that the law and regulations were complied with as far as his purchases were concerned. With regard to Haslem's purchases, there were no requirements of posting, no stock powers to be signed (as the certificates themselves were endorsed by the mixed blood) and there were no limiting terms or conditions to be complied with in connection with the sales.

The Court's own Findings of Fact to the effect that the price at which shares of stock sold between and among white men during the pertinent period ranged between \$500 and \$700 (A. 529). There was no evidence of any sale in excess of \$700, and the evidence was that most of the sales between white men, ranged between \$400 and \$550. The sales from mixed bloods to white men ranged between \$300 and \$700. (A. 529). That fact is exemplified by sales made by the 12 bellwether plaintiffs themselves. (A. 474-498).

Some of the alleged facts in petitioners' counsel's Statement of the Case and Argument are so flagrantly false and misleading as to require comment. One of the most offensive paragraphs in that respect is found on page 10 of petitioners' brief. It reads as follows:

"The officers of the Bank, at its Roosevelt office located on the Indian Reservation, then began trafficking in the stock—performing functions which were substantially those of a broker in the regular securities markets. They located purchasers of the stock throughout the United States, who maintained substantial deposits in the bank for the purpose of making purchases. They also arranged for agents, usually used car dealers, who contacted Indians during periods of economic crisis, sometimes contrived (as in the case of Melvin Reed, who was subjected to a large fine for drunkenness by one of the Bank officers acting in the capacity of Justice of the Peace), and sometimes already existent (as in the case of Letha Wopsock who needed money because she had been requested by the Chief to operate a concession stand for the annual Sun Dance). Such market as ever existed for the UDC stock was largely maintained by the Bank officers for their out of state clients, at prices fixed by the Bank officers in Roosevelt and at its central office in Salt Lake City."

In the first place, the Roosevelt office was not located on the Indian Reservation. Second, "performing functions which were substantially those of a broker in the regular securities markets" is an inordinate exaggeration as is the statement: "They located purchasers of the stock throughout the United States. . . ." To support these allegations petitioners' counsel cites A. 500-522 and exhibits appearing on pages 108-119 of the

Appendix. According to the petitioners' own references, there were only seven out-of-state purchasers involved.

Third, the statement that the Bank officers "arranged for agents, usually used car dealers," is a falsehood. The entire record reveals only one used car dealer with whom one of the Bank officers (Gale) had an arrangement in connection with the purchase and sale of mixed blood stock. The petitioners' documentation to support that statement (A. 484-86 and A. 41) makes no reference to such "agents" other than the one used car dealer, Nick Murray. At A. 41 there is no reference whatsoever to the arrangement for an agent by the Bank's officers.

Fourth, supposedly supporting the ridiculous statement that the market for UDC stock was maintained by Bank officers for their out-of-state clients is A. 529. Petitioners' counsel says: "The trial judge so concluded." That is an absolutely false statement. At page 529 of the Appendix, counsel's reference, the court makes the following statement, which is Paragraph 7 of his Findings of Fact related to damages:

"7. While considerable market data are available concerning the value of said stock, such data are not deemed fully indicative of the fair value of the stock for the purposes of this action. The prices paid during said period were influenced by the improper activities of Gale and Haslem and the negligence of the government as herein found, and by the facts that the typical Indian seller was not as well informed of the potential value of said stock as the typical buyers, the number of sellers exceeded the number of buyers, and the typical Indian seller was under heavy economic pressure to sell. There is evidence that a well informed em-

ployee of the government had expressed the opinion that the stock was worth in excess of \$700 per share. Only a portion of the depressant factors was attributable to the defendants, and there is indication that in sales between white persons where most of these factors were of minimal importance or were non-existent the price did not materially exceed \$700 per share. *There is evidence also that the tribe had reasonable opportunity to purchase when its officials were as well informed concerning the potential value of the stock as anyone, and that it declined to purchase such stock at available prices ranging between \$350 and \$700.*" (Emphasis supplied.)

There is not a single word in said Findings of Fact indicating that the Bank officers maintained a market for its out-of-state clients at prices fixed by the Bank officers. The fixing of prices by the Bank officers at \$350, petitioners attribute to an entry in the minutes of a UDC meeting at page 330 of the Appendix. There the UDC officers and Mr. Cowan, Trust Officer of the Bank, were discussing the value of the stock from the standpoint of possible loan from the Bank. Mr. Cowan, based in part on what the tribe had decided, expressed his opinion that the value of the stock was nearer \$350 per share than \$500 per share. The court in the Finding of Fact referred to above states that the evidence is that the tribe had reasonable opportunity to purchase, that its officials "were as well informed concerning the potential value of the stock as anyone, and that it declined to purchase such stock at available prices between \$350 and \$700." If anyone can take credit for "fixing" the price, it would have to be the tribe itself, not Mr. Cowan, who was merely reflecting the opinion of the tribe.

The fact is clear from the evidence that the price was not fixed by anyone at \$350. The court's own Finding of Fact quoted above and referred to by petitioners' counsel himself proves that. In the trial court's Finding of fact No. 6 (A. 529) the court said:

"The evidence indicates that during the years 1964 and 1965, stock in the te Distribution Company was being sold by mixed bloods at a price between \$300 and \$700 per share."

The Tenth Circuit with respect to this issue said:

"...The evidence does not support the finding that the market price was depressed by the defendants."

Obviously counsel's entire paragraph is unsupported by his own references and an inexcusable misstatement of the evidence.

On page 15 of his brief, counsel states:

"The seventy-four pages of detailed findings of fraud obviously cannot be summarized in the space of this brief, ..."

Apparently petitioners' counsel is loosely referring to the trial court's Findings of Fact. It is incomprehensible that petitioners' counsel would resort to such a shabby falsehood in a brief filed with this Honorable Court and expect to retain credibility.

The fact is that in seventy-six pages of Findings of Fact, the trial court used the word "fraud" only once, and that was when the court said:

"The United States did not fraudulently or otherwise conceal or secrete from the plaintiffs the existence of any cause of action ..." (A. 511).

Never once in the seventy-six pages did the court use the term "fraud" with respect to the defendants Gale, Haslem or the Bank.

It is true that in the Conclusions of Law the trial court devoted three pages to the proposition that Gale and Haslem had violated Regulation X10b-5. But at no time did the court use the term "fraud".

The Tenth Circuit said:

"The record does not support the trial court's finding of a conspiracy, plan or scheme to violate any duties owed to the plaintiffs by any of the defendants."

In light of the examples cited above demonstrating the desperate carelessness or deliberate distortion with which petitioners' counsel treats the evidence, it is not surprising that the United States Court of Appeals paid little deference to petitioners' counsel's version of the facts.

SUMMARY OF ARGUMENT

The respondent respectfully urges this Court to uphold the decision of the United States Court of Appeals for the Tenth Circuit.

The respondent believes it is not guilty of violating 10b-5 because its employees Gale and Haslem did not violate it.

Each petitioner's claim must be examined separately and the law applied to the facts in his particular case. The process is simplified by the circumstance that respondents Gale and Haslem engaged in sales transactions with

only three of the twelve petitioners. It is those three alone to whom misstatements could have been made and they alone could charge Haslem and Gale with failure to disclose. If there was a misstatement or nondisclosure with respect to one or more of the three, then the question of reliance becomes significant.

With respect to the issue of reliance this respondent bases its position chiefly on the case of *List v. Fashion Park, Inc.*, 340 F.2d 457 (2nd Cir. 1965) which states among other things:

"... The test of 'reliance' is whether 'the misrepresentation is a substantial factor in determining the course of conduct which results in [the recipient's] loss.' (Citations). The reason for this requirement, ... is to certify that the conduct of the defendant actually caused the plaintiff's injury.

"The proper test is whether the plaintiff would have been influenced to act differently than he did act if the defendant had disclosed to him the undisclosed fact."

~~Petitioners' contention that the Bank violated 10b-5~~ rests solely on their allegations that its agents, Gale and Haslem, violated that regulation. The Bank did not buy or sell any shares of stock of the Ute Distribution Corporation and realized no profit from the sale of any such shares.

Respondent John Gale purchased stock from only two of the bellwether plaintiffs. He bought five shares from Glen Reed at \$350 a share and sold them at \$530 a share. The trial and circuit courts found that Gale made a material misstatement to Reed when he told Reed \$350 was all that people were paying and was guilty of a culp-

able nondisclosure when he failed to inform Reed that he, Gale, could sell the shares to an out-of-state buyer for \$530 a share. It is the Tenth Circuit's position that the record held no evidence that Reed relied on Gale's representation. On the issue of reliance respondent concurs with the Circuit and adds that there is affirmative evidence that Reed did not rely and that therefore the misstatement or nondisclosure was not the proximate cause of damage, if any, suffered by Reed.

Gale bought five shares from Mrs. Wopsock. He sold the first two shares at the same price he paid for them, and there is no evidence that he sold the other three shares at a price in excess of the amount he paid. There is no evidence of any misstatements or nondisclosures to Mrs. Wopsock. There is affirmative evidence that she did not rely on any representation made by Gale. She had independent knowledge as to the value of the stock based on her previous sales to other persons and her conversations with the Assistant Superintendent of the Indian Reservation.

Gale did not purchase stock from any of the other ten bellwether petitioners. He did not participate in the negotiations involving any sales by the other ten petitioners. There is no evidence that he made any misstatements or that he was guilty of any nondisclosures with respect to any of the other ten petitioners. The only thing he had to do with any of the other ten petitioners' transactions was to perform ministerial duties of guaranteeing signatures or notarizing affidavits. He was a complete stranger to some of the transactions.

Vern Haslem purchased shares from only two of the bellwether petitioners, five from petitioner Glen Reed at

\$400 a share and one from petitioner Arthur Workman for \$350 a share. There is no evidence that Verl Haslem sold those shares at a profit. So there is no evidence that he made any misstatement to the sellers as to the market price of the shares he purchased. His mere failure to inform the sellers that he was going to sell to someone else is not a violation of 10b-5.

Moreover, it is patent that Workman would not rely solely on Haslem's representations of the market value of the stock, true or false, if any were made, because the record reveals that Workman would be expected to know more about the value of the stock than Haslem.

There is specific evidence of lack of reliance on Reed's part in connection with the sale. He testified that he believed his stock was worth \$500; yet he sold for \$400 to Haslem.

Haslem did not purchase stock from any of the other ten bellwether petitioners. He did not participate in the negotiations involving any other sales by the ten petitioners. There is no evidence that he made any misstatements or was guilty of any nondisclosure with respect to any of the other ten petitioners. The only connection he had with any of the other transactions involving the other ten petitioners was to notarize two of the affidavits involved. He was a complete stranger to all of the other transactions.

ARGUMENT

This respondent contends that it was not guilty of violating Rule 10b-5 because its employees, Gale and Haslem, were not guilty of its violation.

This case, quite properly, was not a class action, though the trial court slipped into treating it that way. In determining whether or not Gale or Haslem violated the prohibitions of Regulation 10b-5, the burden of proof rests upon each petitioner to show that he individually was a victim of the type of device, scheme, artifice, misstatement, nondisclosure, act, practice, or course of business prohibited by the regulation; that some such conduct was practiced and imposed on him by Gale or Haslem, or both of them, and that such conduct was the proximate cause of damage to him. The evidence relating to each individual must be examined and each case evaluated separately to determine if there was or was not a violation with respect to that individual. The compensations received, the knowledgeability of the petitioners and the conduct of the Bank employees vary with respect to different petitioners. In many instances, there was no contact whatsoever between the petitioner who sold his stock and any Bank employee.

The trial court took the easy road and lumped all of the petitioners together, and doing so, in the abstract, found 10b-5 violations, and blanketed all the petitioners with favorable Findings of Fact and Conclusions of Law, which may or may not have been applicable to particular petitioners. The court reversed the old adage: It was not able to see the trees for the forest.

Regulation 10b-5 (17 C.F.R. 240 10b-5), which was promulgated under Section 10(b) of the Securities Exchange Act of 1934 (Title 15 U.S.C., Sec. 78(j)), provides that with respect to the purchase or sale of a security, it shall be unlawful:

"(a) To employ any device, scheme or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit on any person . . ."

One of the most significant cases as related to the case at bar is *List v. Fashion Park, Inc.*, 340 F.2d 457 (2nd Cir. 1965). In that case plaintiff owned a substantial number of shares in Fashion Park, Inc., a clothing manufacturing company which was not prosperous. He sold his shares to four defendants at \$18.50 a share and soon thereafter the company merged with the Hat Corporation, which paid \$50.00 per share. The plaintiff sued the four buyers, charging violation of 10b-5 on the grounds that they did not disclose to him that one of them was a director of Fashion Park, and that the directors of Fashion Park had resolved to attempt to sell the corporation to another company and that there was a possibility of such a sale.

The trial court, hearing the case without a jury, held that "there was insufficient evidence of a conspiracy, that plaintiff would have sold even if he had known that one of the buyers was a director of Fashion Park, and that the undisclosed possibility that Fashion Park might be sold was not a material fact."

The appeal court sustained the trial court's decision.

In many respects, of course, that case and the case at bar are not analogous. In that case the buyer was an

"insider." In the case at bar, Gale and Haslem are not "insiders." There the seller was an experienced investor. Here the sellers were not. However, with respect to the application of the principle of reliance on misstatements or nondisclosures, the two cases are sufficiently analogous to provide some assistance. It is the burden of each petitioner to show that any misstatements or nondisclosures made by Gale and Haslem were material and that they relied on them, that is, they would not have sold the stock had it not been for the misstatements or nondisclosures of Gale and Haslem.

The following statements of the court in the *List* case are of significance:

"Because there is much disagreement and confusion among the parties concerning the meaning and applicability of 'reliance' and 'materiality' under Rule 10b-5, we think it advisable first to set forth the well known and well understood common law definitions of these terms and the reasons for the rules in which the terms are incorporated. Insofar as is pertinent here, the test of 'reliance' is whether 'the misrepresentation is a substantial factor in determining the course of conduct which results in [the recipients] loss.' Restatement, Torts §546 (1938); accord, Prosser, Torts 550 (2 ed. 1955); I. Harper & James, Torts 583-84 (1956). The reason for this requirement, as explained by the authorities cited, is to certify that the conduct of the defendant actually caused the plaintiff's injury. The basic test of 'materiality,' on the other hand, is whether 'a reasonable man would attach importance [to the fact misrepresented] in determining his choice of action in the transaction in question.' Restatement, Torts §538(2) (a); accord, Prosser, Torts 554-55; I. Harper & James, Torts 565-66. Thus,

to the requirement that the individual plaintiff must have acted upon the fact misrepresented, is added the parallel requirement that a reasonable man would also have acted upon the fact misrepresented.

"The parties to this suit apparently agree that the requirement that a misrepresentation be material is carried over into civil cases under Rule 10b-5 involving nondisclosure by an insider. Moreover, the meaning of the term is ostensibly the same as at common law. III Loss, Securities Regulation 1431. 'Materiality' encompasses those facts 'which in reasonable and objective contemplation might affect the value of the corporation's stock or securities . . . ' *Kohler v. Kohler Co.*, 319 F.2d 634, 642 (7 Cir. 1963).

"Disagreement centers on the applicability and meaning of the requirement that reliance be placed upon the misrepresentation. Our examination of the authorities satisfies us that this requirement also is carried over into civil suits under Rule 10b-5. *Reed v. Riddle Airlines*, 266 F.2d 314, 319 (5 Cir. 1959); *Kohler v. Kohler Co.*, 208 F. Supp. 808, 823 (E.D. Wis. 1962), *aff'd*, 319 F.2d 634 (7 Cir. 1963); *Mills v. Sargej Corp.*, 133 F. Supp. 753, 767 (D.N.J. 1955); *Speed v. Transamerica Corp.*, 5 F.R.D. 56, 60 (D.Del. 1945); accord; III Loss, Securities Regulation 1765-66. The dicta in *Kardon v. National Gypsum Co.*, 83 F.Supp. 613, 614 (E.D.Pa. 1947), are not necessarily to the contrary. Plaintiff also relies on the fact that in *Speed v. Transamerica Corp.*, 99 F.Supp. 808, 833, the court allowed a class action by the defrauded sellers, from which he infers that no inquiry into the reasons why each seller transferred his stock is required by Rule 10b-5. However, a comparison of that decision with the opinion in an earlier phase of the same suit, *Speed v. Transamerica Corp.*, 5 F.R.D. 56, 60, shows that a class action

was allowed only because the court was convinced that all members of the class had relied on defendant's misrepresentation.

“(8,9) This interpretation of Rule 10b-5 is a reasonable one, for the aim of the rule in cases such as this is to qualify, as between insiders and outsiders, the doctrine of *caveat emptor*—not to establish a scheme of investors' insurance. Assuredly, to abandon the requirement of reliance would be to facilitate outsiders' proof of insiders' fraud, and to that extent the interpretation for which plaintiff contends might advance the purposes of Rule 10b-5. But this strikes us as an inadequate reason for reading out of the rule so basic an element of tort law as the principle of causation in fact.

* * * *

“The proper test is whether the plaintiff would have been influenced to act differently than he did act if the defendant had disclosed to him the undisclosed fact. *Speed v. Transamerica Corp.*, 99 F.Supp. 808, 829; *Kardon v. National Gypsum Co.*, 73 F.Supp. 798, 800 (E.D.Pa. 1947). To put the matter conversely, insiders are not required to search out details that presumably would not influence the person's judgment with whom they are dealing. *Kohler v. Kohler Co.*, supra, 319 F.2d art 642. This test preserves the common law parallel between 'reliance' and 'materiality,' differing as it does from the definition of 'materiality' under Rule 10b-5 solely by substituting the individual plaintiff for the reasonable man. Of course this test is not utterly dissimilar from the one hinted at by the trial court. That the outsider did not have in mind the negative of the fact undisclosed to him, or that he did not put his trust in the advice of the insider, would tend to prove that he would not have been influenced by the undisclosed fact even if the insider had disclosed it to him.”

The writer will attempt to apply the foregoing principle of law to the facts involving each of the individual petitioners to the extent that the limitations of a brief will permit. The entire testimony of the petitioners covers only 146 pages in the record and the writer submits study of their testimony will reveal that each one fails to make a case.

PETITIONER GLEN REED

According to the Court's Findings of Fact (A. 474-75) Reed sold five shares to Gale for \$350 a share after the shares had been properly offered for sale to the Tribe *at that same price*. Thereafter Gale sold the shares to a white man for \$530 a share.

This might be considered respondents' "worst" case of the twelve, inasmuch as it is the *only one which involves a resale by Gale on which there is evidence that Gale made a profit*.

Petitioners' complaint here is that Gale violated 10b-5(2) in that Gale failed to disclose to Reed that he was going to sell the shares for \$530 a share and that he told Reed that \$350 a share was all that people were paying.

This is the *one* transaction involving the twelve petitioners to which the following language of the Circuit Court's opinion applies:

"As to the elements to be established, the record shows that the individual defendants made a misstatement of a material fact in representing, in those instances wherein they purchased stock for sale at a personal profit, that the prevailing price or market price was the figure at which their own purchase was made. This representation was

obviously false in those instances in view of the fact that they resold the shares almost immediately at a higher price." *Reynos v. United States*, 431 F.2d 1337 (10th Cir. 1970).

The Circuit, however, recognized that in spite of the misstatement, there was no liability because there was no reliance. There was no evidence of reliance by Reed. It can be affirmatively inferred from the evidence that Reed would have sold to Gale and at the same price, even if Gale had told him he was going to resell at \$530 a share to one Phelps who lived out of the state because Reed said he was "happy to get that money," (A. 172) and even though he thought the shares were worth \$500 apiece, he accepted \$350.00 (A. 173).

On August 30, 1964 (A. 475-76), Reed sold five shares at \$400 a share to Verl Haslem. Inasmuch as this sale was after August 27, there was no requirement to offer to the Tribe, no affidavit to be executed and the seller endorsed the certificate itself rather than signing a stock power, and had an opportunity to read the warning against sale on the stock certificate. Haslem resold the stock to a white man. There is no evidence that he made any profit (A. 475-76). Consequently, there is no evidence that the market was in excess of \$400 a share at that time. Apparently the trial court's position was that the fatal nondisclosure violating 10b-5 was Haslem's failure to disclose that he was going to sell to someone else.

A failure of disclosure, unassociated with any affirmative representation, is not a violation of 10b-5 according to the recent case of *Wessel, et al, v. Buhler*, Federal Securities Law Reports 92,929, decided by the Ninth Circuit on January 22, 1971. The court said:

"We find nothing in Rule 10b-5 that purports to impose liability on anyone whose conduct consists solely of inaction. On the contrary, the only subsection that has any reference to an omission, as distinguished from affirmative action, is subsection (2) providing that it is unlawful to omit to state a material fact necessary in order to make the statements made . . . not misleading, 'i.e., an omission occurring as part of an affirmative statement. (See *Brennan v. Midwestern United Life Insurance Co.* (7th Cir. 1969) 417 F.2d 147, 154-55.) We perceive no reason, consonant with the congressional purpose in enacting the Securities and Exchange Act of 1934, thus to expand Rule 10b-5 liability. (Cf. *SEC v. Texas Gulf Sulfur Co.*, supra, 401 F.2d at 866-68 (J. Friendly, concurring specially).) On the contrary, the exposure of independent accountants and others to such vistas of liability, limited only by the ingenuity of investors and their counsel, would lead to serious mischief."

Reliance required by the cases is not established. Reed would certainly assume that Haslem might sell to someone else and at a profit. There is no evidence that if Haselm had told him he was going to sell to someone else that he would have refused to sell to Haslem. There is no evidence as to what the undisclosed resale price was. Consequently, there is no evidence that the nondisclosure was material. So the materiality requirement to establish a violation is not satisfied.

PETITIONER LETHA HARRIS WOPSOCK

Letha Harris Wopsock, according to the Court's Findings of Fact, (A. 479-80) subsequent to August 27, 1964, sold three shares to Gale for \$350 a share. Gale purchased a truck with the two shares for \$700.00 (A.

74), realizing no profit. Petitioners' position apparently is that Gale violated 10b-5(2) by failing to disclose that he was going to resell. Certainly that does not satisfy the requirements of materiality or reliance and constituted no violation of 10b-5(2) in light of the fact that petitioner Wopsock had previously been told by Mrs. Logan, second in command at the Uintah and Ouray Indian Agency, that the stock was worth \$700 a share (A. 481). In spite of that she was willing to sell to Gale for \$350 a share. This petitioner's testimony (A. 27-52) does not reveal any misrepresentation on the part of Gale.

There is no finding by the trial court or evidence in the record of the employment of any device, scheme or artifice to defraud in violation of 10b-5(1) or any act, practice or course of business which operated as a fraud or deceit in connection with this transaction involving Mrs. Wopsock. There is no evidence of reliance or materiality.

Petitioner Wopsock sold one share to Gale in October (\$400) and in November (\$350) of 1964 (A. 480). With respect to these two sales, the court made *no finding*, and there is no evidence in the record that Gale was guilty of any misstatement or nondisclosure. None is claimed by the petitioner. There is no evidence or finding of a device, scheme, artifice, act, practice or course of business operating to defraud in violation of 10b-5(1) and (3). If there were any evidence or finding of any of the acts prohibited by 10b-5, there is obviously no evidence of materiality or reliance in connection with these two transactions (A. 480).

According to the trial court's Findings (A. 478-79) Wopsock, prior to August 1, 1963, exchanged five

shares and a 1960 GMC pickup truck with one Clyde Murray for a new 1962 GMC pickup truck and camper. She, according to the trial court, told Gale she was getting a truck and she signed an affidavit indicating that she valued the amount she received for the stock at \$500 a share. There is no evidence or finding as to the actual value of the vehicle she received, so there is no evidence or finding that Gale had any knowledge that she had received anything less than \$500 worth of value for each share (A. 479). Bearing on the issues of 10b-5 (1) and (3) involving devices and schemes, etc., there is no finding or evidence *that Gale had any connection or communication with Clyde Murray in connection with this or any other sale.* It is the court's finding that

"Neither Gale, Haslem, nor the Bank directly received anything from the sale except a fifty cent notary fee." (A. 479).

There is also no finding or evidence that Gale or Haslem or the Bank received anything *indirectly* from the sale. Consequently, there is no finding or evidence of any device, scheme, artifice, act, practice or course of business on the part of the respondents which was fraudulent in the 10b-5 sense, and no finding or evidence or any claim of misstatement or nondisclosure on the part of respondents in connection with this transaction. Again it must be noted that prior to this sale, she had been informed by Mrs. Logan that the stock was worth \$700 a share, yet she was willing to sell for \$500. There is no establishment of materiality or reliance.

In February, 1964, she transferred two shares to one Hoopes (A. 479), a trading post owner, for what she considered to be a value of \$700 per share. She had

advertised the stock for \$500 a share. Gale notarized her affidavit on her representation to him that she had received \$1,400 for the two shares. There is no evidence or finding that Haslem knew anything about or had anything to do with this transaction. There was no evidence or finding that Gale or Haslem had any communication or connection with Hoopes regarding the transaction. The court found that

"Neither Gale, Haslem or the Bank directly received anything from this transaction except a fifty cent notary fee." (A-479-80).

There is no evidence or finding that they received anything *indirectly*.

Consequently, there was no evidence or finding of a device, scheme, artifice, misstatement, nondisclosure, act, practice or course of business prohibited by 10b-5. If there were, there is no finding or evidence of materiality or reliance.

PETITIONER JOSEPH ARTHUR WORKMAN

Workman on November 27, 1964, sold one share of stock to Verl Haslem for \$350 by endorsement of the stock certificate (A. 490). Haslem sold it to his brother. There is no evidence that Haslem made a profit. According to the court's Findings, Workman had been one of the five members of the Board of Directors of the Affiliated Ute Citizens from 1958 to 1961 (A. 489), which presented the mixed blood group.

"He knew and understood that his Ute Distribution Corporation stock represented an interest

in the tribal minerals . . . (A. 490). He knew the purpose and had more than the ordinary knowledge of the possibilities of the corporation, as well as what his stock represented. The distribution on the stock was part of the distribution of assets of the tribe to the individual members. He attended numerous meetings prior to termination where termination was discussed. . . . Occasionally they discussed the potential value of the stock and Mr. John Boyden, counsel for the council of the mixed-bloods, often advised the people in attendance to retain their stock." (A. 490-91).

There is a reasonable inference from the record that he knew much more about the stock and its value than Verl Haslem knew. Having been on the Board of Directors of the Affiliated Ute Citizens, he was almost, in effect, an "insider" in contemplation of 10b-5, whereas Haselm was an outsider. There is no finding or evidence or claim of a device, scheme, artifice, misstatement, non-disclosure, act, practice or course of business in violation of 10b-5. There is no evidence of reliance or materiality.

In February, 1964, prior to the Haslem transaction, Workman sold six shares to one Huish for \$500 a share, the price at which he had advertised the stock. He received that amount and signed a true affidavit, notarized by John Gale (A. 489). "Workman was satisfied with one of his sales for \$500 per share and still is." (A. 490) (Court's Finding of Fact). Actually he testified he was satisfied with all of his sales at \$500 and still is (A. 324) and he was knowledgeable with regard to the stock and remained satisfied in spite of the outlandish claims of his attorneys with regard to the value of the stock. Obviously, Gale, Haslem and the Bank had absolutely nothing to

do directly or indirectly with promoting or inducing this sale and did not benefit from it.

Workman testified that he was present at meetings of the mixed bloods when their own attorney advised them not to sell their stock (A. 326). He was part of the Board which sent out letters to the petitioners advising them not to sell. Obviously, discouragement from Bank personnel would not have influenced him.

The trial court denied Workman a judgment against the defendant United States of America because Workman, the court thought, was sufficiently knowledgeable that he was guilty of contributory negligence and so could not recover against the United States of America (A. 537). Though the Bank, Gale and Haslem also claimed contributory negligence as a defense (Pretrial Order) (A. 18), the trial court unfathomably ignored that and gave him judgment against them. Haslem bought one share from this man, who knew more about the stock than Haslem did, yet the Court unaccountably and inexplicably awarded him judgment against the Bank, Haselm and Gale on all seven shares in the sum of \$10,469.07! The court's decision with respect to Workman on the 10b-5 is utterly incredible. The writer is convinced that an overburdened court must simply have committed an inadvertent \$10,000 error and did not actually intend such an appalling, unsupportable result. It is a prime example of how the trial court failed to see the trees for the forest. Such inattention and disregard of the facts of the individual cases characterized the court's entire decision. The court simply took a broad brush and painted everybody the same color.

Gale and Haslem did not purchase any stock from any of the other nine designated petitioners. There isn't space in a brief to dwell in detail on each one individually as counsel would like to do, but he beseeches this Court to examine the trial court's findings with respect to the sales made by each one (A. 474-498) and the testimony in the record, and search for evidence that Gale, Haslem or the Bank were involved in a single act that could conceivably be one prohibited by 10b-5, or if they did, that the petitioners have established reliance.

The court found with respect to each of the other nine petitioners that neither Gale, Haslem nor the Bank profited "directly" from the transactions and does not point out where or how they profited "indirectly."

PETITIONER FRED LAROSE BURSON

With respect to Burson's first five share sale, the court finds:

"Neither Gale, Haslem nor the Bank had anything directly to do with the sales negotiations, nor did they receive anything from the sale." (A. 479).

With respect to the second five share sale, the court finds:

"Neither Gale, Haslem nor the Bank directly received anything from the sale except a fifty cent notary fee paid to the Bank and they did not participate in the negotiations involved in the sale." (A. 477-78).

Burson testified that he got \$5,000 or the equivalent thereof for his stock (A. 195) and that "I don't think I got beat." (A. 191).

Never does the court point out how Gale, Haslem or the Bank benefited indirectly from the Burson sales.

PETITIONER LOUISE ALLEN CASE

With respect to Mrs. Case's sale of her first five shares to one Labrum, all the court could find with respect to Gale was that he received a fifty cent notary fee. (A. 482).

She then sold three shares to Richard Murray at \$440 a share. Her signature was guaranteed and her affidavit notarized by Gale. He did not participate in the negotiations involved in this sale (A. 482-83). The shares were sold to Gullström and Wood of Illinois, whom the court found to be "clients" of Gale. (A. 482). There is no evidence that Gale received anything from the transaction and Haslem had absolutely nothing to do with it. They were not involved "in connection with the purchase or sale" of the security.

She then sold two shares to one Bastian for \$400 a share (A. 483). Gale and Haslem had nothing to do with this transaction. They never talked to the petitioner about it, did not guarantee the signature or notarize the affidavit, and there is no evidence that they had any communication with Bastian with respect to the transaction. There is no evidence or finding that they even knew the transaction took place. How the court could render judgment against Gale, Haslem and the Bank in this transaction on any basis is beyond understanding.

PETITIONER MELVIN REED

With respect to Melvin Reed's sale of ten shares to Richard Murray (A. 484), Gale notarized the affidavit.

There is no evidence or claim that he was guilty of any misstatement or nondisclosure or that the shares were resold or that he made any profit or that this sale was any part of a device, scheme, artifice, act, practice or course of business to defraud. The findings show that Haslem had nothing to do with the transaction. There is no evidence he ever heard of it.

Reed, at the time of trial, was serving a term in the State Prison for forgery (A. 484). Nevertheless, the trial court chose to believe his testimony rather than Justice of the Peace Gale's and found that because Gale fined him for being drunk (A. 485) and later Murray got him drunk again and sold him a Cadillac for his stock and John Gale notarized the affidavit, Gale was guilty of violating 10b-5 and the court rendered judgment against Gale, Haslem and the Bank for \$14,969.07.

There was no finding of a resale of the stock to Gale or to anybody else. There was no finding that Gale, the Bank or Haslem made a dime out of the transaction. Haslem had nothing to do with it. Gale was a victim of guilt by association with a used car dealer. The Bank suffered because its employee Gale was a Justice of the Peace who did his duty, and Haslem is still shaking his head wondering how the court mixed him up in it!

PETITIONER MARGUERITE MURRAY HENDRICKS

Mrs. Hendricks sold five shares to Clyde Murray (A. 487-88) and five to Richard Murray (A. 488), and with respect to both transactions, the court finds:

"Gale did not participate in the sales trans-

actions and he received only a fifty cent notary fee." (A. 488).

Haslem isn't mentioned by anyone anywhere in connection with the transaction. He didn't even get fifty cents.

PETITIONER LEONARD RICHARD BURSON

Burson sold ten shares to La Vere Labrum (A. 491) for an automobile. The court finds:

"Gale did not participate in the sales negotiations and received nothing from the transaction except a notary fee." (A. 492).

Haslem is nowhere mentioned in the record with respect to this transaction. There is no evidence anywhere of any tie up between Gale and Labrum. Burson was "satisfied" with the transaction (A. 491). There was no complaint or evidence that the car was not worth the price Labrum asked for it (A. 491). Burson had no complaint—only his attorneys.

PETITIONER ORAN F. CURRY

Curry sold one share to Mr. Chasel and one to Mr. Swain. The affidavits were notarized by Gale. Gale did not participate in the sales negotiations and received nothing but a fifty cent notary fee (A. 492, 493).

Later Curry sold three shares to Clyde Murray for \$600 a share. Gale notarized the affidavit. The court found:

"Except as in these findings indicated, Gale did not participate in the sales negotiations and

received nothing but a fifty cent notary fee." (A. 493).

There is nothing "indicated" anywhere in the Findings to the contrary.

Curry then sold two shares to Bastian and Gale guaranteed the signature. Gale had nothing to do with the affidavit. Someone else notarized it—an Irene K. Ruppel (A. 493). The court states again:

"Except as in these findings indicated Gale did not participate in the sales negotiations and received nothing but a fifty cent notary fee." (A. 493).

No exception is "indicated" anywhere in the Findings. There is no evidence of any communication between Gale and Bastian relating to the sale. Gale received no benefit from the transaction and the Bank did not even receive a fifty cent notary fee. The record does not reveal whether or not Irene K. Ruppel got a notary fee or whether or not she was involved "in connection with the purchase or sale of a security."

After August 27, Curry sold two shares to Bastian. Gale had no connection whatsoever with these sales. Verl Haslem guaranteed the signature on the stock certificates which Curry endorsed. The court found:

"Except as in these findings indicated Haslem made no representation, did not participate in the sales negotiations and received nothing from the transactions." (A. 494).

Nowhere does the court indicate in the Findings that Haslem *ever* made any representations to Curry or participated in any sales negotiations involving him or ever received anything from the transactions (A. 494).

"Curry had been prominent in tribal affairs. He knew the Ute Distribution Corporation owned minerals, lands and possibly future claim money that he had coming from the government." (A. 494-95) (Court Findings of Fact). He was the father of a mixed blood, Reginald Oran Curry (A. 247), who had been since July, 1967, the administrative officer for the Ute Indian Tribe, and as such had been the liaison officer between the Ute Indian Tribe and the Bureau of Indian Affairs of the state and federal governments (A. 248).

At the time Curry and his one son, Richard, (also a petitioner) sold their stock, Reginald Oran Curry, the other son, was Resource Director of the Ute Indian Tribe and had served in that capacity for "a number of years." (A. 248). Reginald (Rex) testified his "capacity in that position was to work with the resources of the tribe as liaison between the Ute Indian Tribe and the Bureau of Indian Affairs and other governments and helping in the acquisition of lands, leasing of lands, this type of work, working with water rights belonging to the Ute Indian Tribe for their protection and advisory to the business committee." (A. 248). Reginald has testified before a Congressional Committee concerning tribal affairs (A. 248). He did not sell his stock.

When Oran Curry and his son, Richard, had a son and brother to rely on who, it is reasonable to conclude, knew as much as any man in the world about the resources represented by their stock, to assume that they would rely on anything told them by Haslem or Gale or anyone connected with the First Security Bank is unrealistic. If they didn't believe their knowledgeable son and brother, who didn't sell his stock, how could they be

expected to believe Gale or Haslem? Certainly Oran and Richard Curry were in a position to know from their son and brother infinitely more about the value of their stock than Gale or Haslem or anyone else at the Bank could tell them.

Because of Curry's knowledgeability, the trial court denied him recovery against the government, but granted judgment against Gale, Haslem and the Bank (A. 527, 537). Six of the ten shares Curry sold with the certificates in his hands, which he signed (A. 159-61). He could have read the red warning label; nevertheless the trial court lumped him in with those who are supposed to have been duped by the Bank because they did not have a chance to read the label.

PETITIONER STEWART E. REED

Reed sold five shares to Clyde Murray. Gale notarized the affidavit. The trial court used its stock statement:

"Except in these findings otherwise indicated, Gale and Haslem did not participate in the sales negotiations and received nothing from the transaction." (A. 495).

Again the court nowhere otherwise "indicates." Another nothing added onto nothing.

—Then Reed sold five shares to one Wallace Davis. Haslem notarized the affidavit. The court repeated the same phrase quoted with respect to the sale to Murray (A. 496). Gale had nothing to do with the transaction. This nothing added to nothing resulted in another judgment against Gale, Haslem and the Bank for \$14,969.07, which the Circuit reversed.

PETITIONER RICHARD H. CURRY, JR.

Curry sold five shares to Clyde Murray for \$500 a share. Gale guaranteed his signature on the stock power, but did not notarize the affidavit. It was notarized by someone else who was not a Bank employee. Gale did not participate in the sales negotiations and received nothing from the transaction (A. 497-98).

After August 27, 1964, Richard Curry signed a stock certificate transferring three shares to Richard Murray. Gale and Haslem had nothing to do with the transaction. Curry's signature on this stock certificate was not guaranteed, and, of course, there was no affidavit involved (A. 498). Later, also after August 27, Curry signed a certificate transferring two shares to Mr. and Mrs. Harmston. The signature was guaranteed by Gale. Gale and Haslem had nothing to do with the sales transaction (A. 498). This plaintiff is the brother of Reginald Curry, previously described, who is the Ute Tribe Administrator and former Resource Director of the Tribe (A. 248).

No elements whatsoever of a 10b-5 violation are evident with respect to any of Richard Curry, Jr.'s sales. Richard Curry at one time was an employee of the Duchesne County Sheriff and in the Army during the Korean War he attained the rank of sergeant (A. 496-97).

PETITIONER CHARLES T. REED

After August 27, 1964, Reed sold his ten shares to Richard Murray by signing the certificate (A. 498). The deal was consummated in Murray's garage. Reed and Murray came to the Bank and Gale guaranteed the

signature. Gale did not participate in the sales negotiations (A. 498-99). There is no evidence that Gale received anything from the sale (A. 499). Haslem had nothing whatsoever to do with the transaction. There is no evidence that he had any knowledge of it.

The respondent Bank submits that Gale and Haslem with respect to the twelve cases reviewed above did not violate Rule 10b-5. No other agent of the Bank was accused by the trial court of violating that rule, and therefore the Bank did not violate 10b-5.

The trial court continued to add nothing to nothing to nothing and came up with something that was nowhere supported in his own Findings or in the evidence. How time and time again the trial court could find with respect to individual after individual, case after case, that Gale and Haslem did nothing prohibited by law, and in some cases did nothing at all, but were complete strangers to the transactions, and then total them up and find that they cheated everybody, is incomprehensible to the writer.

It was also incomprehensible to the Tenth Circuit.

CONCLUSION

Respondent, First Security Bank of Utah, N.A., respectfully asks this Honorable Court to uphold the de-

cision of the United States Court of Appeals for the Tenth Circuit.

Respectfully submitted,

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CERTIFICATE OF MAILING

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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-78

**AFFILIATED UTE CITIZENS OF THE STATE OF UTAH,
ET AL., PETITIONERS**

v.

UNITED STATES OF AMERICA, ET AL.

ANITA REYOS, ET AL., PETITIONERS

v.

**FIRST SECURITY BANK OF UTAH, N.A.,
UNITED STATES OF AMERICA, ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE TENTH CIRCUIT**

**BRIEF FOR THE UNITED STATES AND BRIEF FOR
THE SECURITIES AND EXCHANGE COMMISSION AS
AMICUS CURIAE IN REYOS**

OPINIONS BELOW

The opinions of the court of appeals in these consolidated cases are separately reported at 431 F.2d

1337 and 1349 and are set forth at pages 576-587 and 587-588 of the Appendix.

JURISDICTION

The judgments of the court of appeals were entered on June 19, 1970. Motions for rehearing were denied on November 12, 1970 (App. 588). The petition for a writ of certiorari was filed on February 9, 1971, and granted on April 19, 1971 (402 U.S. 905). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, under 25 U.S.C. 345, the United States has consented to a suit to compel the conveyance to certain terminated Indians of an undivided 27 percent interest in the mineral estate of a reservation, which interest was distributed to individual Indians through shares of a corporation responsible for jointly managing the estate.

2. Whether, after termination of federal supervision over certain Indians and removal of restrictions on their property, the United States has a continuing duty, for purposes of tort liability, to advise them with respect to sales of their stock in a corporation formed by them to manage tribal mineral rights.

3. The Securities and Exchange Commission as *amicus curiae* in *Reynos* will discuss the following question: Whether under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder a seller may recover against the agent who transfers his securities where the agent develops a

market for the seller's securities and reaps a financial gain from the buyers by facilitating transfers of these securities, but fails to disclose to the seller the agent's financial interest in the transaction and the fact that the securities are selling for a significantly higher price in the market developed and encouraged by the agent.

STATUTES AND RULE INVOLVED

The Ute Partition Act of August 27, 1954, 68 Stat. 868, as amended, 25 U.S.C. 677-677aa, is reprinted in an Appendix to petitioners' brief, pp. i-xviii, and is reprinted in an Appendix to this brief at pp. 69-90 *infra*.

The Act of August 15, 1894, 28 Stat. 305, as amended, 25 U.S.C. 345, is reprinted in an Appendix to this brief at pp. 90-91 *infra*.

Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b), provides:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Rule 10b-5 (17 C.F.R. 240.10b-5), promulgated by the Commission under the Securities Exchange Act of 1934, provides:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,

(1) to employ any device, scheme, or artifice to defraud,

(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security.

THE INTEREST OF THE SECURITIES AND EXCHANGE COMMISSION

Private civil actions charging violations of the federal securities laws are a "necessary supplement" to the Commission's own enforcement actions. *J. I. Case Co. v. Borak*, 377 U.S. 426, 432. Such private litigation reinforces the deterrent impact of securities regulation and also provides a restorative remedy to investors who have been injured by securities violations.

The most pervasive concept underlying the federal securities laws is the investor's right to know—his

right to deal with other investors, with corporate issuers and with those acting as professionals in the securities industry on a basis of trust and confidence. This right depends for its fulfillment upon the disclosure to the investor of all facts that might bear weight in any rational process of investment decision-making. In *Securities and Exchange Commission v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 186, this Court emphasized that a "fundamental purpose, common to those [securities] statutes, was to substitute a philosophy of full disclosure for the philosophy of *caveat emptor* * * *." What is required is not that all investors be equally judicious and prudent in their investment decisions, but that all material facts necessary to the making of such decisions be placed before investors for evaluation, that no material facts which might reasonably influence those decisions be withheld.

No single provision of the federal securities laws is more important as a safeguard of the investor's right to know than Section 10(b) of the Securities Exchange Act of 1934, as implemented by the Commission's Rule 10b-5 thereunder; these "may well be the most litigated provisions in the federal securities laws * * *." *Securities and Exchange Commission v. National Securities, Inc.*, 393 U.S. 453, 465. As general proscriptions against manipulation, deception and fraud in connection with the purchase and sale of securities, these provisions were purposefully drafted to encompass every conceivable means by which investors could be deprived of their right to know. The lower federal courts, and this

Court itself,¹ have generally interpreted the anti-fraud provisions of the federal securities laws flexibly; in accord with the broad remedial purposes they were designed to serve. Thus, the courts have read Section 10(b) and Rule 10b-5 as prohibiting "fraudulent schemes, tricks, devices, and all forms of manipulation," however presented to investors. *Hooper v. Mountain States Securities Corp.*, 282 F. 2d 195, 202 (C.A. 5), certiorari denied, 365 U.S. 814.

It is therefore a matter of critical concern to the Commission that the decision of the court of appeals in *Reynos* with respect to petitioners' claims against the Bank and its employees appears to diverge sharply from generally prevailing interpretations of Rule 10b-5.

STATEMENT

These two consolidated cases involve claims relating to the Ute Partition Act of August 27, 1954, 68 Stat. 868, as amended, 25 U.S.C. 677-677aa. In 1954 the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah had a total membership of 1765, consisting of two district groups—the full-bloods (1326) and the mixed-bloods (439).² The Act provided for

¹ See *Securities and Exchange Commission v. Capital Gains Research Bureau, Inc.*, *supra*, 375 U.S. at 195; *J.I. Case Co. v. Borak*, 377 U.S. 426; *Tcherepnin v. Knight*, 389 U.S. 332; *Securities and Exchange Commission v. National Securities, Inc.*, 393 U.S. 453; *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375.

² H.R. Rep. No. 2493, 83d Cong., 2d Sess. 2 (1954).

partition and distribution of the Tribe's assets between the mixed-blood and full-blood members of the Tribe, for termination of federal supervision over the trust and restricted property of the mixed-blood members, for a development program for the full-bloods with a view toward termination of federal supervision of them, and for other matters relating to separation of the two groups.³ At this time the estimated value of the cash, accounts receivable and land owned by the Tribe totalled nearly \$21 million;⁴ the Tribe's other assets included oil, gas and mineral rights,⁵ and unadjudicated and unliquidated claims against the United States.

The Act defined "full-blood" as a "member of the tribe who possesses one-half degree of Ute Indian blood and a total of Indian blood in excess of one-half," 25 U.S.C. 677a(b); "mixed-bloods" were those members of the Tribe who were not full-bloods, 25 U.S.C. 677a(c). For purposes of the Act, the mem-

³ 25 U.S.C. 677; see generally Bureau of Indian Affairs, Phoenix Area Office, *History of the Ute Partition Act on the Uintah and Ouray Reservation*, a copy of which we are lodging with the Clerk of this Court.

⁴ S. Rep. No. 1632, 83d Cong., 2d Sess. 6 (1954); H.R. Rep. No. 2439, 83d Cong., 2d Sess. 4 (1954). Much of the cash consisted of the Tribe's sixty percent share of the 1950 settlement judgment of \$31 million in *Confederated Bands of Ute Indians v. United States*, 117 Ct. Cl. 433. (The remaining forty percent went to the Southern Ute Tribe. See *United States v. Southern Ute Indians*, 402 U.S. 159.) See 25 U.S.C. 672.

⁵ Primarily oil shale deposits underlying the Reservation (App. 528).

bership rolls submitted by the Tribe to the Secretary of the Interior within thirty days after the effective date of the Act were to be considered final. 25 U.S.C. 677g. The Act further provided that upon publication of the final rolls "the tribe shall thereafter consist exclusively of full-blood members" and "[m]ixed-blood members shall have no interest therein except as otherwise provided" in the Act. 25 U.S.C. 677d.⁶

After publication of the final membership rolls, the tribal business committee of the full-blood group and the authorized representative of the mixed-blood group were to formulate a plan for dividing the Tribe's assets on the basis of the "relative number of persons comprising the final membership roll of each group." 25 U.S.C. 677i.⁷ When this had been completed, the mixed-bloods were to prepare a plan for distributing their portion of the assets to the individual members of the mixed-blood group. 25 U.S.C. 677l. After each mixed-blood had received his distributive share of the plan, either directly or through a corporation in which he had an interest, federal restrictions on his property were to be removed, 25 U.S.C. 677o; when this had been done, the Secretary

⁶ The final membership roll was published on April 5, 1956, and consisted of 490 mixed-bloods and 1314 full-bloods. 21 Fed. Reg. 2208-2220.

⁷ The ratio for division of the assets was 72.83814 percent for the full-bloods and 27.16186 percent for the mixed-bloods since the final roll consisted of 1804 members, 490 of whom were mixed-bloods and 1314 of whom were full-bloods (see note 6 *supra*). (The court of appeals in *Affiliated Ute* (App. 587) and the district court in *Reynos* (App. 465) misstated the mixed-bloods' percentage as 27.1686, as had petitioners in their complaint in *Affiliated Ute* (App. 538).

was to publish a "proclamation declaring that the Federal trust relationship to such individual is terminated." 25 U.S.C. 677v.

Section 677e of the Act authorized the mixed-blood group to organize, to adopt a constitution, and to provide in their constitution for the selection of authorized representatives who could take any action "required by sections 677-677aa of this title to be taken by the mixed-blood members as a group." Accordingly, in 1956 the mixed-bloods formed Affiliated Ute Citizens of the State of Utah, an unincorporated association (Ex. App. 151). Among other things, Affiliated Ute's constitution empowered its board of directors to delegate to corporations organized in accordance with the Act "such powers and authority as may be necessary or desirable in the accomplishment of the objects and purposes for which said corporations may be so organized" (Article V, section 1(b), Ex. App. 155).

The Ute Distribution Corporation was formed in 1958 for the purpose of managing "jointly with the Tribal Business Committee of the full-blood members of the Ute Indian Tribe * * * all unadjudicated or unliquidated claims against the United States, all gas, oil and mineral rights of every kind, and all other assets not susceptible to equitable and practical distribution to which the mixed-blood members of the said tribe * * * may become entitled * * * and to receive the proceeds therefrom and to distribute the same to the stockholders of this corporation * * *" (Ex. App. 3-4). Formation of a corporation and issuance of stock for these purposes constituted part of the plan formulated by the mixed-

bloods for distributing assets to the individual members of their group (Ex. App. 141).⁸ In a general membership meeting on November 1, 1958, Affiliated Ute Citizens approved the articles of incorporation of Ute Distribution Corporation (Resolution No. 58-G5; Ex. App. 18), and, on January 7, 1959, "irrevocably" delegated authority to the Ute Distribution Corporation, as well as to two other companies of the mixed-bloods—the Antelope Sheep Range Company and the Rock Creek Cattle Company (see 25 U.S.C. 6771(3)),⁹ to accomplish the purposes for which they were formed.¹⁰ Ute Distribution Corpo-

⁸ Resolution No. 56-66 of Affiliated Ute Citizens states that the "plan was ratified by unanimous vote by the membership at a Special General Membership Meeting held at Fort Duchesne, Utah on July 14, 1956." This Resolution is not contained in the record in these cases but is part of the record in *Affiliated Ute Citizens, et al. v. United States*, No. 156-69, Court of Claims, where it is included as Affidavit No. 3, Item 9, in support of the government's motion for summary judgment, which is currently pending. (The same counsel represents petitioners here and plaintiffs in the Court of Claims case.)

⁹ Both of these corporations issued 1 share to each of the 490 mixed-bloods (App. 469).

¹⁰ Resolution No. 59-8. This resolution is not contained in the Appendix before this Court, but is reprinted in full in the appendix to petitioners' brief in *Reynos* in the court of appeals, at pp. 7-8. The resolution reads as follows:

RESOLUTION NO. 59-8
UINTAH AND OURAY AGENCY
FORT DUCHESNE, UTAH

January 7, 1959

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE AFFILIATED UTE CITIZENS OF

ration thereafter issued 4900 shares of stock, 10 to each mixed-blood Ute (App. 578). By agreement of December 31, 1958, between the Corporation and re-

THE STATE OF UTAH, that the Board of Directors of the Affiliated Ute Citizens of Utah delegate the authority to all three corporations—Antelope Sheep Range Company, Rock Creek Cattle Company and the Ute Distribution Corporation, to organize in accordance with the constitution of the Affiliated Ute Citizens of the State of Utah, Article V, Section 1, Paragraph (b) as follows:

"To irrevocably delegate to corporations, or the officers thereof, organized pursuant to and in accordance with Public Law 671—83rd Congress, 2nd Session (68 Stat. 868), to receive, manage, distribute or otherwise handle assets of the mixed-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation, such powers and authority as may be necessary or desirable in the accomplishment of the objects and purposes for which said corporations may be so organized."

/s/ ELMER HACKFORD
Elmer Hackford, *President*

/s/ JOSEPH A. WORKMAN
Joseph A. Workman, *Member*

/s/ ELIZABETH BUMGARNER
Elizabeth Bumgarner, *Member*

/s/ PRESTON V. ALLEN
Preston V. Allen, *Vice President*

/s/ LULA H. MURDOCK
Lulu H. Murdock, *Member*

CERTIFICATION

I hereby certify that the above resolution was adopted by the Board of Directors of the Affiliated Ute Citizens of the State of Utah, at a Special meeting held at Fort Duchesne, Utah, on the 7th day of January, 1959, at which a quorum was present and by a vote of 5 for and 0 against.

/s/ CRYSTAL WILCKEN
Secretary, Board of Directors

spondent First Security Bank of Utah, the Bank became transfer agent for this stock. The Bank also held physical possession of the stock certificates (Ex. App. 13-15).¹¹

The Ute Distribution Corporation's articles of incorporation included a provision that, prior to August 27, 1964, no sale of the shares would be valid unless first offered to members of the Tribe in a form approved by the Secretary; if the offer were not accepted by any member of the Tribe, the sale to others must be at a price no lower than that stated in the offer (Ex. App. 6).¹² The articles of

¹¹ The Corporation decided to deliver the stock certificates to the Bank rather than to the individual shareholders "because of some rather unfavorable experiences had in the Indian services with the loss of valuable instruments" (Ex. App. 19-20).

¹² Compare 25 U.S.C. 677n, which granted a similar right of first refusal for sales of interest in real property within 10 years from August 27, 1954, the effective date of the Act:

Any member of the mixed-blood group may dispose of his interest in the tribal assets prior to termination of Federal supervision, subject to the approval of the Secretary. In the event a member of the mixed-blood group determines to dispose of his interest in any of said real property at any time within ten years from August 27, 1954, he shall first offer it to the members of the tribe, and no sale of any interest, prior to termination of Federal supervision, shall be authorized without such offer to said members of the tribe in such form as may be approved by the Secretary. After termination of Federal supervision the requirement of such offer, in form to be approved by the Secretary, shall be a covenant to run with the land for said ten-year period, and shall be expressly provided in any patent or deed issued prior to the expiration of said period.

incorporation provided further that each stock certificate should contain the following: "Transfer of this certificate at any time prior to August 27, 1964, to a person not a member of the Ute Indian Tribe * * * shall be invalid unless the certificate of the Superintendent of the * * * Reservation is endorsed thereon showing that a prior and proper offer has been made to members of said tribe * * *" (Ex. App. 6, 107). In addition, each certificate bore on its face in red lettering the following (Ex. App. 106):

WARNING

This certificate does not represent stock in an ordinary business corporation. This corporation is organized for the purpose of distributing to the stockholders in the future their respective shares in the proceeds or income from all claims and assets in which the mixed-blood members of the Utah Indian Tribe of the Uintah and Ouray Reservation, Utah have or will have an interest under the provisions of Public Law 671—83rd Congress, approved August 27, 1954, 68 Stat. 868, as amended. The future value of, or return on, this stock cannot be determined. This stock certificate should neither be sold nor encumbered by the owner thereof, but should be retained and preserved for the benefit of the stockholder and the stockholder's family.

And (in black type):

Countersigned, First Security Bank of Utah,
N.A., Fourth South Office, Transfer Agent, Salt
Lake City, Utah, By

Authorized Officer

The mixed-blood shareholders were advised of the substance of the foregoing warning on numerous occasions after the stock had been issued (App. 472); many responded to this advice by saying that the "ten shares of Ute Distribution was their business, and they could do as they pleased with it."¹³

On August 5, 1960, the Secretary of the Interior promulgated regulations setting forth, among other things, the procedure a mixed-blood should follow before selling his stock in a corporation of the mixed-bloods to an outsider prior to August 27, 1964. 25 Fed. Reg. 7620; 25 C.F.R. (1965 Cum. Pocket Supp.) 243.1-243.12. These regulations provided that if a mixed-blood determines to sell his stock, "he shall first offer it to the members of the tribe in accordance with the provisions set forth in the Articles of Incorporation and in the certificate of stock of such corporation and in the manner provided in §§ 243.5 through 243.10, as far as practicable." 25 C.F.R. 243.12. Pursuant to Sections 243.5-243.10, which established procedures for a mixed-blood's disposing of his interest in real property,¹⁴ the seller would first notify the Superintend-

¹³ Testimony of Mrs. Lena D. Sixkiller, a member of the mixed-blood group and President of the Ute Distribution Corporation (App. 326-342, 343). Mrs. Sixkiller said that she agreed (App. 343). See also Ex. App. 34.

¹⁴ After "termination of Federal supervision over the property of a mixed blood member * * * and before August 27, 1964" a mixed-blood could sell his interest in real property "after having provided members of the tribe with an opportunity to meet his sales price or meet the highest bona fide offer received by him, which opportunity shall be referred to as a 'right of first refusal' in members of the tribe." 25

ent of the Reservation of the price and terms on which his stock is offered for sale. 25 C.F.R. 243.5. The Superintendent then notified the corporation and the business committee, of the Tribe and posted notices at various locations around the Reservation. 25 C.F.R. 243.6. If no member of the Tribe accepted the offer, the Superintendent so informed the mixed-blood, who could then "sell such [stock] at any time within six months thereafter to any person at the same or greater price and upon the same terms and conditions upon which it was offered to the members." 25 C.F.R. 243.8. After making the stock offering in the manner provided by the regulations and then selling to a non-member of the Tribe, the selling mixed-blood furnished an affidavit to the Superintendent of the Reservation, stating the amount he received in the sale of his shares (App. 207).¹⁵ Since the articles of incorporation of Ute Distribution Corporation also required that each stock certificate contain the endorsement of the Superintendent that the stock had been first offered to members of the Tribe (Ex. App. 6), the Superintendent prepared such a certificate and sent it to the Bank, which subsequently attached it to the stock certificate (Ex. App. 28-30).

C.F.R. 243.4. This "right of first refusal" with respect to interests in real property had been provided in the Ute Partition Act, 25 U.S.C. 677n. See note 12 *supra*.

¹⁵ The details of this procedure, including the requirement of an affidavit by the seller, were developed by the First Security Bank in conjunction with the Corporation (Ex. App. 29-31).

After removal of restrictions on the property of the individual mixed-bloods, the Secretary was required to publish a proclamation in the Federal Register that the federal trust relationship to them was terminated. "Thereafter, such individual shall not be entitled to any of the services performed for Indians because of his status as an Indian." 25 U.S.C. 677v. The proclamation was published on August 26, 1961 (26 Fed. Reg. 8042).

In the *Affiliated Ute* case, the association—Affiliated Ute Citizens—purporting to represent all terminated mixed-bloods brought an action on April 25, 1968, against the United States seeking distribution of 27 percent of the mineral estate underlying the Reservation to the individual mixed-bloods "pro-rata" and a determination that plaintiff Affiliated Ute Citizens, rather than the Ute Distribution Corporation, is entitled to manage these interests jointly with the Ute Tribal Business Committee of the full-blood Utes. Jurisdiction was sought to be invoked under 25 U.S.C. 345 and 28 U.S.C. 1399 and 2409. (App. 538-539.) The district court concluded that it had no jurisdiction and dismissed the complaint (App. 564). The court of appeals affirmed, holding that the action was an unconsented suit against the United States and that 25 U.S.C. 345 (waiver of consent with respect to allotment claims) and 28 U.S.C. 1399, 2409 (waiver of consent where the United States is a joint tenant or tenant in common) were inapplicable (App. 587-588).

In the *Reynos* case, which had been instituted three years before the *Affiliated Ute* case by a group of

mixed-bloods,¹⁶ plaintiffs sued the First National Security Bank of Utah, two of its employees, and the United States.¹⁷ The twelve plaintiffs had sold 122 shares of their stock in the Ute Distribution Corporation to various non-Indians (including defendants Gale and Haslem, who were employees of the defendant Bank) (App. 583). At a time when these shares were being sold for between \$500 and \$700 per share in the non-Indian market, the purchase prices, as reported in the affidavits of the mixed-blood sellers, ranged from \$300 to \$700 per share, and averaged \$500 a share (App. 529 but see n. 47, *infra*). These sales took place during the period from July 1963 to January 1965, after restrictions on the mixed-bloods' property had been removed and after the proclamation terminating the federal trust relationship to each individual mixed-blood had been published.

With respect to the complaint against the United States,¹⁸ the district court in *Reynos* found that the government, through its employees, had reason to know that the mixed-bloods were selling their stock to non-Indians under circumstances of a doubtful nature,¹⁹ that the government owed a duty

¹⁶ Twelve out of a group of 85 were selected as "bellwether" plaintiffs for purposes of trial (App. 18-19).

¹⁷ The original complaint filed on February 17, 1965, did not name the United States as a defendant (App. 511). The complaint was later amended to add the government as a defendant (App. 4).

¹⁸ A more complete statement of the facts relating to plaintiffs' claims against the Bank and its employees is contained in part III of this brief, *infra* pp. 51 to 57.

¹⁹ See note 47 *infra*.

to the sellers to prevent these sales, that the government's failure to act was the proximate cause of the sales, and that the government was therefore liable under the Federal Tort Claims Act, 28 U.S.C. 2671-2680, for the difference between the "fair value" of the stock and the amount received by the mixed-blood sellers (App. 531-537). The court held, however, that the government was not liable with respect to sales after August 27, 1964 (App. 537); after that date the requirement in the Ute Distribution Corporation's articles of incorporation that a mixed-blood first offer his shares to members of the Tribe (see p. 12 *supra*) and the government's regulations setting forth the procedure to be followed by a mixed-blood in carrying out this requirement (see p. 14 *supra*) no longer applied. The court therefore held that one of the plaintiffs (Charles T. Reed) had no cause of action against the United States because all of his sales of stock occurred after August 27, 1964 (App. 575, 498-499). The district court also found that two other plaintiffs (Oran F. Curry and Joseph A. Workman) had been contributorily negligent and were not entitled to recover against the government (App. 534, 575). As to the nine remaining plaintiffs, the court held that the fair value of their stock was \$1500 per share and that the United States was liable for the difference between this amount and what the plaintiffs had received from their sales (App. 537).

The court of appeals reversed the district court's judgment against the United States (App. 576-587). The court held that no form of wardship or limited

trust relationship between the United States and the mixed-bloods existed after termination (App. 580-581). It further held that the right of refusal given members of the Tribe with respect to sales of the mixed-bloods' stock created no duty on the part of the government to the plaintiffs because, as sellers, they "had no rights under the right of refusal"; this "right was granted clearly to permit the members of the Tribe, the Tribe, or the full-blood members to have the first right to purchase property which was about to be sold to an outsider" (App. 580).

SUMMARY OF ARGUMENT

I

A. The court of appeals properly upheld the district court's dismissal of petitioners' actions in the *Affiliated Ute* case, which sought a "pro-rata" distribution to each mixed-blood of 27 percent of the oil, gas and mineral interest on the Reservation. This is an unconsented suit against the United States and is therefore barred. - See *Malone v. Bowdoin*, 369 U.S. 643. By the Act of August 15, 1894, 28 Stat. 305, as amended, 25 U.S.C. 345, the United States has not agreed to be sued in this kind of action. That statute gives consent only for suits regarding rights to allotments, that is, tracts of land set aside out of a common holding and awarded to individual Indian allottees. The phrase in Section 345 regarding suits where Indians are excluded from any parcel of land refers only to cases where an Indian has or is entitled to an allotment and is wrongfully excluded

from the land. This is not such a suit. In seeking distribution of the undivided mineral estate contained on Reservation land, petitioners are not claiming any right to an allotment or any rights relating to an allotment.

B. The Ute Distribution Corporation (UDC), not Affiliated Ute Citizens, is entitled to manage the mineral rights jointly with the Tribal Council of the full-bloods. The Tribe itself, including the full-blood and mixed-blood members, drafted the Ute Partition Act of 1954 and, in urging Congress to give it favorable consideration, the Tribe's attorney said it was expected that the mixed-bloods would form a "distributing corporation" to manage the mineral rights. Ute Distribution Corporation became this "distributing corporation."

There can be no doubt that the Corporation was validly formed under the Act. Section 677e allowed the mixed-bloods to organize, to adopt a constitution, and to provide in this constitution for the selection of authorized representatives to take any action required by the Act. The mixed-bloods organized Affiliated Ute Citizens in 1956 and adopted a constitution at that time. The constitution authorized Affiliated Ute Citizens to delegate all necessary powers and authority to corporations founded by the mixed-bloods. Such a delegation took place in 1958 when Affiliated Ute Citizens not only approved the Corporation's articles of incorporation and its issuance of stock to each mixed-blood, but also "irrevocably" delegated authority to the Corporation to act in accordance with its articles of incorporation. Pursuant

to Section 677l(3) the mixed-blood group were authorized "to transfer a portion of the assets of said group to a corporation or other legal entity for any purpose."

Moreover, after passage of the Ute Partition Act of 1954, Congress recognized the validity of a corporation such as UDC by exempting from corporate income taxes any corporation formed by the mixed-bloods to manage mineral rights. Act of August 2, 1956, 70 Stat. 936. And in 1967 Congress specifically recognized UDC by directing the Secretary of the Interior to pay part of the Ute Tribe's judgment against the United States to the Ute Distribution Corporation. Act of August 1, 1967, 81 Stat. 164, as amended, 25 U.S.C. 676a.

II

A. In *Reynos*, twelve individual mixed-blood plaintiffs claimed that the United States was negligent in preventing them from selling their stock in UDC. It is the government's position that insofar as a duty to these plaintiffs is concerned, the Ute Partition Act of 1954 and the 1961 termination proclamation of the Secretary of the Interior terminated federal supervision over the stock and its transfer by the mixed-bloods.

The Act was drafted by the Tribe, introduced at the request of the Tribe, and supported by both the full-blood and mixed blood groups. Many of the 490 mixed-bloods had never lived on the Reservation and sought immediate termination so that they could receive in cash their interest in Tribal assets, which in 1954 included \$21 million in cash, accounts receiva-

ble and land, as well as oil, gas and minerals contained in land on the Reservation. When in 1961 the Secretary of the Interior published a termination proclamation, 26 Fed. Reg. 8042, as Section 677v of the Act required, federal restrictions on the mixed-bloods' property ended and the federal trust relationship to each individual mixed-blood terminated.

Part of the property held by each mixed-blood consisted of stock in mixed-blood corporations, such as the Antelope Sheep Range Company, the Rock Creek Cattle Company, and the Ute Distribution Corporation. Each mixed-blood owned 10 shares of stock of the Ute Distribution Corporation, which the mixed-bloods formed in 1958 to manage mineral rights jointly with the Tribal Council of the full-bloods. Although the 1961 termination proclamation did not serve to remove restrictions on the oil, gas and minerals since these were on still restricted Tribal land and owned in part by the full-bloods who were not terminated, the termination proclamation did remove restrictions on the mixed-bloods' stock in UDC. Thereafter the mixed-bloods were free to sell their stock without governmental approval or supervision. The situation here is the same as when a regular business corporation is restricted by law in the disposition of its assets; such a restriction in no way limits the shareholders' right to dispose of their stock. In this case, the mixed-bloods were not restricted in the sales of their stock in UDC, and the United States should not be held liable for failing to prevent transactions it had no right to control.

B. The right of first refusal with respect to this stock created no duty on the part of the United States to the terminated mixed-bloods seeking to dispose of their shares. Before a mixed-blood could sell his stock to a non-member of the Ute Indian Tribe, he was required first to offer the stock to members of the Tribe at a price not less than that for which he intended to sell to the outsider. Although the Act provided a right of first refusal for sales of real property, 25 U.S.C. 677n, the right of first refusal with respect to UDC stock is not derived from any provision of the Act. Instead the right stems from a provision in the Ute Distribution Corporation's articles of incorporation, which also provided that the offer should be in a form approved by the Secretary. Thus when the Secretary promulgated regulations dealing with the right of first refusal for sales of real property, these were also made applicable to sales of stock as far as practicable.

As to federal supervision of the mixed-bloods and federal restrictions on their property, this provision in the Corporation's articles of incorporation did not serve to postpone the termination that Congress directed in the Act. No residual wardship status remained; termination was complete. After termination the mixed-bloods were free to dispose of their shares of stock as they pleased and the United States had no right or duty to restrict them.

Moreover, the selling mixed-bloods were not within the class of persons entitled to the right of first refusal itself. A seller could not accept his own offer and thereby exercise this right to buy his own

stock. Therefore, even if the right of first refusal were derived from the Act, which it is not, it created no duty on the part of the United States to mixed-bloods sellers, such as the plaintiffs in *Reynos*.

Since the United States owed no duty to mixed-bloods seeking to dispose of their stock, the United States did not negligently fail to prevent them from selling.

III

In the *Reynos* case, plaintiffs also sued the First Security Bank of Utah, N.A., and its employees, John B. Gale and Verl Haslem, seeking damages for these defendants' alleged violations of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, in connection with sales of their stock in the Ute Distribution Corporation between 1963 and 1965.

Pursuant to an agreement between the Bank and the Corporation in 1958, the Bank became the transfer agent for the stock and handled the documents implementing the right of first refusal; the Bank also held physical possession of the stock certificates. In order to sell his stock each mixed-blood therefore had to deal through the Bank. In practice, defendants' activities went beyond those of a mere transfer agent: defendants actively encouraged a market for these shares, accepted standing orders from non-Indians to buy, and received commissions and gratuities, as well as increased deposits, from non-Indian buyers for facilitating these transactions. During all relevant times defendants were thoroughly

familiar with the "non-Indian" market²⁰ they had developed where this stock sold for between \$500 and \$700 per share, and the "Indian" market²¹ where the stock sold for an average of \$500 per share.

In these circumstances, defendants had a duty to disclose to each mixed-blood seller that they had a financial interest in facilitating the sale of his stock and that the stock was selling for a significantly higher price in the non-Indian market defendants had encouraged and developed.

Rule 10b-5(1) and (3) prohibit "any device, scheme, or artifice to defraud" and "any * * * course of business which operates * * * as a fraud or deceit upon any person" in connection with securities transactions. In *Securities and Exchange Commission v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194, the Court held that fiduciaries in securities transactions have a duty of utmost good faith, requiring full and fair disclosure of all material facts to their clients, and that fraud includes all acts, omissions or concealments which involve breach of a legal duty or trust and by which undue advantage is taken of another. In this case defendants' activities would have brought them squarely within the definition of "brokers" and "dealers" under the Act, 15 U.S.C. 78c(a)(4) and (5), except for the fact that banks are expressly exempted from coverage. However, even though this means that defendants were not required to register

²⁰ Transactions between non-Indians.

²¹ Transactions between an Indian seller and a non-Indian buyer.

as broker-dealers under the Act, they nevertheless remained subject to Rule 10b-5, which applies to "any person," and their duty of disclosure was analogous to that of other professionals in the securities industry, a duty this Court outlined in *Capital Gains*.

Thus, under Rule 10b-5(1) and (3) defendants were required to disclose all material facts in connection with the securities transactions they facilitated. The facts that defendants had a financial interest in these transactions and that the stock was selling for a significantly higher price in the non-Indian market were "material" because a reasonable investor "might have * * * considered [these facts] important," *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 384. And in the circumstances of this case where the violations consisted of total non-disclosure, a showing that the facts withheld were material is a sufficient basis for imposing liability; plaintiffs should not be required to show reliance since it is wholly conjectural whether an investor would have acted differently had he been advised of all material facts.

In sum, defendants violated Rule 10b-5(1) and (3) by pursuing a course of business that operated as a fraud upon the mixed-bloods in connection with sales of their stock and they should be held liable for any losses of the mixed-blood sellers.

ARGUMENT

These two cases present quite different issues although both involve controversies stemming from

formation of the Ute Distribution Corporation. With respect to the claims against the United States, we turn first to the *Affiliated Ute* case in part I, and then discuss the questions in *Reynos* in part II. Part III consists of the Securities and Exchange Commission's views as *amicus curiae* in support of petitioners' claims in *Reynos* against the Bank and its employees, Gale and Haslem.

I.

The Suit in the *Affiliated Ute* Case Was Properly Dismissed for Want of Jurisdiction as an Unconsented Suit Against the United States

The plaintiffs in the *Affiliated Ute* case sought, among other things, to have conveyed to each individual mixed-blood, "pro-rata," 27 percent of the oil, gas and minerals underlying the Uintah and Ouray Reservation (App. 538-539, 587). We agree with the court of appeals that the district court properly dismissed the action for want of jurisdiction.

The United States may not be sued without its consent (*Dugan v. Rank*, 372 U.S. 609; *Larson v. Domestic & Foreign Corp.*, 337 U.S. 682; *Louisiana v. McAdoo*, 234 U.S. 627), and an action to try title to or seek conveyance of government property is one to which the United States has not consented to be sued (*Malone v. Bowdoin*, 369 U.S. 643).

This principle applies equally to Indian land to which the United States holds title in trust. *Minnesota v. United States*, 305 U.S. 382; *Oregon v. Hitchcock*, 202 U.S. 60, 70; see also *Motah v. United States*, 402 F. 2d, 1 (C.A. 10); *Seiden v. Larson*, 188

F. 2d 661, 665 (C.A. D.C.), certiorari denied, 341 U.S. 950. And it applies also to suits brought by a group of Indians who share in the beneficial interest. *Naganab v. Hitchcock*, 202 U.S. 473, 476. That is precisely the situation here. No one disputes that the United States holds title to the land on the Uintah and Ouray Reservation, including the mineral interest (App. 588). Prior to 1954, all members of the Ute Indian Tribe of the Reservation were the beneficial owners of the mineral interest. Under the Ute Partition Act of 1954 the full-blood members now own 72.83814 percent of this property. The 490 terminated mixed-blood members of the Tribe, whom plaintiff Affiliated Ute Citizens purports to represent, owned 27.16186 percent,²² although some mixed-bloods have disposed of their individual interest by selling their shares of Ute Distribution Corporation stock as they were entitled to do. This then is an action to divest the United States of the title it holds to 27.16186 percent of the property in question. As such, it is an unconsented suit against the United States.

A.

Under 25 U.S.C. 345, the United States has Consented Only to Suits to Enforce an Indian's Right to an Allotment of Land and This Is Not Such a Suit

Petitioners point to the Act of August 15, 1894, 28 Stat. 305, as amended, 25 U.S.C. 345, in support of their view that the United States has consented

²² See H.R. Rep. No. 2493, 83d Cong., 2d Sess. 2 (1954); S. Rep. No. 1632, 83d Cong., 2d Sess. 6 (1954). See note 7 *supra*.

to this action.²² We recognize of course that "authorization to bring an action involving restricted lands 'confers by implication permission to sue the United States,'" *United States v. Hellard*, 322 U.S. 363, 368. But 25 U.S.C. 345, which is set out in the margin,²⁴ authorizes only actions regarding allotments of land. See, e.g., *First Moon v. White Tail*, 270 U.S. 243, 245; *Scholder v. United States*, 428 F. 2d 1123 (C.A. 9), certiorari denied, 400 U.S.

²² Petitioners have apparently abandoned the assertion of jurisdiction under 28 U.S.C. 1399 and 2409.

²⁴ 25 U.S.C. 345 provides:

All persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment Act or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States; and said district courts are given jurisdiction to try and determine any action, suit, or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty (and in said suit the parties thereto shall be the claimant as plaintiff and the United States as party defendant); and the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him, but this provision shall not apply to any lands held August 15, 1894, by either of the Five Civilized Tribes, nor to any of the lands within the Quapaw Indian Agency: *Provided*, That the right of appeal shall be allowed to either party as in other cases.

942; *Harkins v. United States*, 375 F. 2d 239 (C.A. 10); *United States v. Preston*, 352 F. 2d 352, 355-356 (C.A. 9); *United States v. Eastman*, 118 F. 2d 421 (C.A. 9). Thus under Section 345, the "district courts are given jurisdiction to try and determine any action, suit, or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty." *Arenas v. United States*, 322 U.S. 419, 429.

In this case no question of allotments or of rights regarding allotments is involved. "Allotment" is a term of art in Indian law; it means a tract of land set aside out of a common holding and awarded to an individual allottee. *Reynolds v. United States*, 174 Fed. 212 (C.A. 8); see Act of February 8, 1887, 24 Stat. 388, as amended, 25 U.S.C. 331-334; Department of the Interior, *Federal Indian Law* 773-818 (1958 ed.). The 27 percent interest in oil, gas and mineral rights that petitioners seek to have conveyed to individual mixed-bloods "pro-rata" obviously is not a tract of land set aside for an individual

* *Scholder* did not hold that a suit could be brought against the United States to "challenge construction charges for irrigation projects under contracts merely collateral to an Indian allotment," as petitioners state (Pet. Br. 40-41). Instead the court held that "The consent given in section 345 does not encompass appellants' challenge to the expenditure, and the district court properly dismissed the individual appellants' first set of claims against the United States," 428 F. 2d at 1126-1127. In any event, in this case petitioners' claims against the United States in no way relate to an Indian allotment.

Indian. Nor are these rights appurtenant to an allotment or part of an individual allottee's right to full possession of his allotment. Compare *United States v. Powers*, 305 U.S. 527, 532-533. The oil, gas and minerals are under tribal land on the Reservation owned by the full-bloods, not under any land allotted to petitioners. And the Ute Partition Act clearly indicates that these minerals are not to be physically divided up and distributed to each individual mixed-blood for the very practical reason that it would be impossible to do so in any equitable manner. See 25 U.S.C. 677i.

If the matter were at all in doubt, and we do not think it is, the inapplicability of 25 U.S.C. 345 plainly appears in light of the relief petitioners seek (see *supra*, p. 27). The remedy provided in Section 345 is that "the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him." This remedy is entirely inappropriate here since petitioners are not entitled to, and their complaint does not seek, an allotment or allotments.

Petitioners also assert (Pet. Br. 39) that their claim comes within the consent of Section 345 because that Section allows suits where Indians are "excluded from * * * any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress." But taken in context, particularly in view of the phrase conferring jurisdiction on the federal courts and the phrase regarding the remedy

the courts may give, both of which are quoted above, the language petitioners rely upon manifestly refers only to situations where an Indian has or is entitled to an allotment and is wrongfully excluded from the land.²⁶

In sum, 25 U.S.C. 345 limits the consent of the United States to suits to enforce an Indian's rights to an allotment and this is not such a suit. Although the district court therefore properly dismissed the action for want of jurisdiction, it is nevertheless appropriate at this point for us to discuss petitioners' claim in the *Affiliated Ute* case, that Affiliated Ute Citizens rather than the Ute Distribution Corporation is entitled to manage the oil, gas and mineral rights,²⁷ since in this Court petitioners now seek to intertwine this claim with their contentions in the *Reynos* case (Pet. Br. 13, 51-55; see pp. 48-50 *infra*):

"Nor can jurisdiction here be based on the Ute Jurisdictional Act of June 28, 1938, 52 Stat. 1209, as amended by the Act of July 15, 1941, 55 Stat. 593; Act of June 22, 1943, 57 Stat. 160; Act of June 11, 1946, 60 Stat. 255; Act of August 13, 1946, 60 Stat. 1049. Section 1 of that Act confers jurisdiction only on the Court of Claims, which is authorized to "hear, determine, and render final judgment on all legal and equitable claims of whatsoever nature which the Ute Indians or any tribe or band or any constituent band thereof, may have against the United States, including, * * * claims arising under or growing out of any treaty or agreement of the United States, law of Congress, Executive order, or by reason of any land taken from them, without compensation." See *Uintah and White River Bands of Ute Indians v. United States*, 139 Ct. Cl. 1.

"Petitioners do not argue that there is a separate jurisdictional basis for this claim apart from their general assertion that jurisdiction lies under 25 U.S.C. 345 because they are entitled to the oil, gas and minerals (Pet. Br. 38-41).

The Ute Distribution Corporation Is Entitled to Manage Jointly With the Full-Blood Ute Indians the Oil, Gas and Minerals Underlying the Reservation

As noted above, in the *Affiliated Ute* case, Affiliated Ute Citizens contended that it was entitled to manage the oil, gas and mineral rights jointly with the Tribal Business Committee of the full-bloods, pursuant to Section 677i of the Ute Partition Act, which provides in part that "All unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall be managed jointly by the Tribal Business Committee and the authorized representatives of the mixed-blood group." As will appear below, contrary to petitioners' claims, the Ute Distribution Corporation not only was formed in accordance with the Act, but is the very kind of corporation that Congress and the Ute Indians themselves sought to allow in 1954 when the Act was considered and passed.

The Ute Partition Act "is the result of proposals initiated by the Ute Tribe of Indians in Utah." H. R. Rep. No. 2493, 83d Cong., 2d Sess. 2 (1954); S. Rep. No. 1632, 83d Cong., 2d Sess. 7 (1954). In urging passage of the Act, which the Tribe itself drafted,²⁸

²⁸ Hearings on S. 3532 and H.R. 9398 before the Subcommittee of the Senate Committee on Interior and Insular Affairs, 83d Cong., 2d Sess. 9, 45 (June 9, 1954) (unpublished) [hereinafter Hearings]. These Hearings are part of

the Tribe's attorney was asked: "You will have two tribal organizations actually, two business groups, will you not; the full bloods and the mixed groups?"²⁸ He replied:²⁹

Temporarily. We expect that the mixed blood organization will disintegrate with the exception of a simple distributing corporation, that will be handled like any other corporation, to distribute assets that are not easily divisible, such as income from oil rights, and so forth, that will be assigned to them. That corporation will go on indefinitely. But there will be no particular need for a governing body after a short time.

Affiliated Ute Citizens became the "organization," and Ute Distribution Corporation the "distributing corporation," that the Indians envisaged in 1954. They drafted this legislation so that the mixed-bloods would be able to form such an organization and such a Corporation. Examination of the Act's provisions leaves no doubt that they validly realized their objectives.

When the mixed-bloods formed Affiliated Ute Citizens in 1956, they adopted a constitution and by-laws (Ex. App. 151). Section 677e clearly permitted them to do this: "The mixed-blood members of the

the record as Defendant's Exhibit UB in the *Reyes* case and plaintiffs' Exhibit 14. The Subcommittee also held hearings on this legislation on April 23, 1954, at Fort Duchesne, Utah; these hearings are not published:

²⁸ Hearings, *supra* note 28 at 51.

²⁹ *Id.*

tribe * * * shall have the right to organize for their common welfare, and may adopt an appropriate constitution and bylaws." The constitution authorized Affiliated Ute Citizens to delegate to corporations formed by the mixed-bloods "such powers and authority as may be necessary or desirable" (Article 5, Section 1(b); Ex. App. 155). Again Section 677e permitted this in no uncertain terms: "Such constitution may provide for the selection of authorized representatives who shall have power to take any action that is required by sections 677-677aa of this title to be taken by the mixed-blood members as a group." When Ute Distribution Corporation was formed in 1958 to manage mineral rights and unadjudicated claims against the United States jointly with the Tribal Business Committee (Ex. App. 1-4), Affiliated Ute Citizens approved the Corporation's articles of incorporation and the issuance of its stock to the 490 members of the mixed blood group (Resolution No. 58-G5; Ex. App. 18), and delegated authority to the Corporation to act in accordance with its articles of incorporation (Resolution No. 59-8; see note 10 *supra*). This was clearly permitted under Section 677l(3): "When, in the opinion of said mixed-blood group, it is to the best interest of said group to transfer a portion of the assets of said group to a corporation or other legal entity for any purpose, the Secretary is authorized to make such a transfer."

That Congress intended to allow a corporation such as the Ute Distribution Corporation to be formed under the Act is further confirmed by Con-

gress' amendment in 1956 (two years before creation of the Corporation) of Section 677p to provide that any corporation formed by the mixed-bloods for the purpose of jointly managing oil, gas and mineral rights would not be subject to corporate income taxes. Act of August 2, 1956, section 3, 70 Stat. 936. Congress again recognized the Corporation's legitimacy in 1962 when it amended Section 677i to provide that the stock of any such corporation would not be subject to mortgage, levy attachment or other similar processes so long as the "stock remains in the ownership of the original stockholder or his heirs or legatees." Act of September 25, 1962, 76 Stat. 597, 598. And in 1967, when Congress authorized the Secretary of the Interior to divide the trust fund resulting from a judgment against the United States in favor of the Confederated Bands of Ute Indians, Congress directed the Secretary to credit "60 per centum to the Ute Indian Tribe of the Uintah and Ouray Reservation, and the Ute Distribution Corporation." Act of August 1, 1967, 81 Stat. 164, as amended, 25 U.S.C. 676a.

The Ute Distribution Corporation, not Affiliated Ute Citizens, is therefore entitled to manage the oil, gas and mineral rights with the full-bloods.

II.

After Partition of Tribal Property and Termination of Federal Supervision Over the Mixed-Bloods, the United States had no Continuing Duty to Supervise Mixed-Blood Ute Indians in Their Sale of Stock Representing Their Allocated Share of Tribal Assets

A.

The Ute Partition Act of 1954 and the 1961 Termination Proclamation Terminated Federal Supervision for the Benefit of the Mixed-Bloods Over Their Stock and Its Transfer by Them

Termination of federal supervision of the mixed-bloods and their property was one of the express purposes of the Ute Partition Act of 1954.²¹ In passing the Act, Congress carried out the wishes of the Ute Indian Tribe for, as previously observed, this legislation was "drafted by the tribe and introduced at the request of the tribe."²²

For many years prior to 1954 there had been considerable friction between the full-blood and mixed-

²¹ Section 677 provides:

The purpose of sections 677-677aa of this title is to provide for the partition and distribution of the assets of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah between the mixed-blood and full-blood members thereof; for the termination of Federal supervision over the trust, and restricted property, of the mixed-blood members of said tribe; and for a development program for the full-blood members thereof, to assist them in preparing for termination of Federal supervision over their property.

²² Letter from Orme Lewis, Assistant Secretary of the Interior, reprinted in H.R. Rep. No. 2493, 83d Cong., 2d Sess. 3 (1954), and S. Rep. No. 1632, 83d Cong., 2d Sess. 7 (1954). See also Hearings, *supra* note 28, at 9.

blood members of the Tribe.³³ As the full-bloods' representative reported, "The way it is now [in 1954], the mixed bloods feel that they are being held back by the full bloods, and the full bloods feel that they, the mixed bloods, are getting the gravy. The full bloods love their reservation and are not as money conscious about it as others."³⁴ At a meeting on March 31, 1954, called by the Tribe to settle these differences, the General Council of the Tribe voted to separate the Tribe's assets among the mixed-blood and full-blood groups and to write legislation to that end.³⁵ After a draft of such legislation had been completed, the mixed-bloods met and approved it by a large majority.³⁶ And when Congress held hearings on this draft, the mixed-bloods' representative urged favorable consideration³⁷ and reported that³⁸

there are many mixed bloods who will ask for immediate termination. They have never lived on the reservation, and they have nothing there except that their name is on the roll and they are entitled to all the benefits of a full blood member of the tribe. They have their own businesses and don't want to come back to the res-

³³ Hearings, *supra* note 28 at 7-8 (Statement of Reginald O. Curry, Chairman, Tribal Business Committee).

³⁴ Hearings, *supra* note 28 at 35 (Statement of Russell Cuch, Representing Full-Blood Members of the Ute Indian Tribe).

³⁵ *Id.* at 9.

³⁶ *Id.* at 20.

³⁷ *Id.* at 18.

³⁸ *Id.* at 21.

ervation, and so they will ask for their interest in cash as quickly as possible to improve their living conditions. And there will be many mixed bloods during this period who find that they are a little on their feet now and are capable of assuming full responsibilities and they will ask for full termination.

He also stressed that the mixed-bloods were educated³⁹ and capable of assuming responsibility for their own affairs after termination.⁴⁰

Thus, when Congress passed the Ute Partition Act in 1954 everyone concerned thought, indeed intended, that after a relatively short period of time "federal restrictions on the mixed-bloods' property would end, the federal trust relationship to each individual mixed-blood would terminate, the mixed-bloods would no longer be entitled to federal services for Indians, and the mixed-bloods would, in the eyes of the law, become undifferentiated from their non-Indian neighbors."⁴¹ And that is precisely what

³⁹ *Id.* at 19 ("From the acculturation chart we have drawn up of the people on the reservation, that was drawn up by some anthropologists, it shows that on the basis of eight grades that the mixed-blood members are 92 per cent educated, and to the eighth grade the full blood members are only 32 per cent."). Nearly all the mixed-bloods had been to high school and some had been to college. *Id.*

⁴⁰ *Id.* at 16.

⁴¹ At most seven years. See 25 U.S.C. 677m, 677p; H.R. Rep. No. 2493, 83d Cong., 2d Sess. 3 (1954); S. Rep. No. 1632, 83d Cong., 2d Sess. 6 (1954).

⁴² See Section 677v:

Upon removal of Federal restrictions on the property of each individual mixed-blood member of the tribe, the

happened when, on August 26, 1961, the Secretary of the Interior had the following proclamation published (26 Fed. Reg. 8042):

Pursuant to the authority contained in section 23 of the Act of August 27, 1954 (68 Stat. 877, as amended; 25 U.S.C. 677v), it is hereby proclaimed that the Federal restrictions on the property of each individual mixed-blood member of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah having been removed, the Federal trust relationship to such individual is terminated and that effective midnight, August 27, 1961, such individual shall not be entitled to any of the services performed for Indians because of his status as an Indian. All statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to such member over which supervision has been terminated, and the laws of the several States shall apply to such member in the same manner as they apply to other citizens within their jurisdiction.

The "property" referred to in the proclamation necessarily includes the stock in the Ute Distribution Corporation, which represented each mixed-blood's

Secretary shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to such individual is terminated. Thereafter, such individual shall not be entitled to any of the services performed for Indians because of his status as an Indian. All statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to such member over which supervision has been terminated, and the laws of the several States shall apply to such member in the same manner as they apply to other citizens within their jurisdiction.

allocated share of tribal property in oil, gas and minerals, as well as the stock held by each mixed-blood in the Antelope Sheep Range Company and the Rock Creek Cattle Company (see p. 10 *supra*), nearly all of which individual mixed-bloods later sold to the Tribe (App. 503-504). There is no doubt that federal supervision ceased with respect to other property, such as cash and other chattels, actually divided between the full-bloods and mixed-bloods and distributed to each mixed-blood. The stock is no different category. For obvious reasons, the oil, gas and minerals could not be physically divided; the full-bloods, who remained under federal supervision, were therefore given an undivided 73 percent interest.⁴³ The assets themselves thus remained subject to restrictions after termination because the full-bloods did.⁴⁴ But plainly the

⁴³ And the mixed-bloods received an undivided 27 percent.

⁴⁴ See 25 U.S.C. 677o(a). After a mixed-blood had received his distributive share of tribal assets, whether directly or through a corporation, Section 677o(a) directed the Secretary "to immediately transfer to him unrestricted control of all other property held in trust for" him and thereby terminate federal supervision of the mixed-blood and his property

except as to his remaining interest in tribal property in the form of any unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other tribal assets not susceptible to equitable and practicable distribution, all of which shall remain subject to the terms of sections 677-677aa of this title, notwithstanding anything contained in said sections to the contrary.

The exception in Section 677o(a) just quoted meant that when each mixed-blood had been terminated, his termination did not serve to remove restrictions on oil, gas and min-

mixed-bloods' stock in the Ute Distribution Corporation did not. The situation is no different from that of a regular business corporation restricted by law in the disposition of its assets beyond a certain percentage.⁴⁶ Such a restriction would in no way limit the shareholders' right to dispose of their stock.

"It rests with Congress to determine the time and extent of emancipation" of Indians. *United States v. Waller*, 243 U.S. 452, 459-460; see also *Brader v. James*, 246 U.S. 88; *United States v. Nice*, 241 U.S. 591; *Tiger v. Western Investment Company*, 221 U.S. 286, 315; *Crain v. First National Bank*, 324 F. 2d 532 (C.A. 9).⁴⁷ In the present case, after

erals themselves. Thus, although 490 mixed-bloods were eventually terminated and although they owned a total of 27 percent of these assets, all of the oil, gas and minerals nevertheless remained subject to restrictions, as did the full-bloods, who were not terminated and who continued to hold an undivided 73 percent interest. On this, there is no dispute among the parties to this litigation; indeed, ever since passage of the Ute Termination Act in 1954 everyone concerned has assumed this to be the proper interpretation of Section 677o(a). See, e.g., Plan for Distribution of the Assets of the Individual Mixed-Blood Members of the Ute Indian Tribe, Uintah and Ouray Reservation, Utah, Article VII (Ex. App. 140-141).

⁴⁶ Compare *Cathedral Estates v. Taft Realty Corp.*, 157 F. Supp. 895, 897 (D. Conn.), affirmed, 251 F. 2d 340 (C.A. 2).

⁴⁷ *Menominee Tribe v. United States*, 391 U.S. 404, is not to the contrary. The question in that case was whether termination of federal supervision over the members of the Tribe abrogated pre-existing hunting and fishing rights established by treaty. In holding that these rights still existed after termination, the court recognized that termination of federal supervision of the Indians was nevertheless complete, *id.* at

termination pursuant to the Ute Partition Act, the only remaining restrictions related to tribal property. With respect to the subject matter of this litigation—the stock issued by the Ute Distribution Corporation—termination was complete: the mixed-blood shareholders, including the plaintiffs here, were free to sell whatever the reason, whatever the price. The Secretary had no authority to exercise discretion over whether such a sale should be allowed or over the selling terms, as he could have done if this were restricted Indian property. And we submit that the United States cannot be charged with liability for failing to prevent a transaction it had no right to control.

B.

The Right of First Refusal Created No Duty on the Part of the United States to the Terminated Mixed-Bloods Seeking to Sell Their Shares

Before a mixed-blood could sell his shares to an outsider, he was required first to offer them to members of the Tribe. No member of the Tribe exercised his right of first refusal with respect to plaintiffs' sales, although the Corporation considered buying these shares (App. 516). (The Tribe on behalf of the full-bloods, is reported to have bought 577 shares over the years. Brief for the Ute Indian Tribe and Ute Distribution Corporation as Amici Curiae, at p. 3. The Tribe also bought from individual mixed-bloods over 90 percent of the shares

412. The court did not hold that termination legislation is to be strictly construed with a view to finding continued or residual wardship after termination, as petitioners suggest (Pet. Br. 37).

in the two other mixed-blood companies, see p. 10 *supra*, for \$550 per share (App. 503-504). Petitioners argue that because of this right of first refusal, a residual wardship survived termination and that the United States thus had a duty to prevent improvident sales of stock by the mixed-bloods. Pointing to irregularities in the procedures and documents used to carry out their sales,⁴⁷ petitioners contend that because the government should have known of these irregularities, the government failed to fulfill its duty to them to prevent such sales and is therefore liable for their losses under the Tort Claims Act, 28 U.S.C. 2671-2680. (Pet. Br. 45-50.)

Under Section 677n, a mixed-blood seeking to dispose of his interest in *real property* any time within ten years from August 27, 1954, had to offer it first to members of the Tribe; after termination, this requirement "shall be a covenant to run with the land for said ten-year period, and shall be expressly pro-

⁴⁷ The affidavits of the mixed-bloods stating that they had sold their shares for a price not less than that offered to members of the Tribe pursuant to the right of first refusal contained in some instances the following defects: "erasures, documents notarized by the transferee or a member of his immediate family, names on the notary seal which differed from the name of the purported notary, operative words of the affidavit including the amount of consideration in different handwriting or different colors of ink appearing to have been added after the document had been signed, and other similar irregularities" (App. 508 [opinion of the district court]). It also appeared in some cases that all of the amount stated on the affidavit had not actually been received in cash; that the sellers had received used cars instead; and that the value of these cars was not sufficient to make up the difference between the cash actually received and the amount stated on the affidavit (App. 474-499; 529).

vided in any patent or deed issued prior to the expiration of said period." 25 U.S.C. 677n.

However, the right of first refusal with respect to Ute Distribution Corporation stock, which constituted personal property of the mixed-bloods, is not derived from Section 677n, or any other statutory provision, as petitioners appear to recognize (Pet. Br. 47). Instead, this right flows from the Corporation's articles of incorporation, which provided that if a mixed-blood determines to sell his stock "at any time prior to August 27, 1964, he shall first offer it to the members of the tribe, including the mixed-blood and full-blood members thereof, and no sale of any of said stock prior to said date shall be valid unless and until said offer is made to said members of the tribe in such form as may be approved by the Secretary of the Interior" (Article VIII, Ex. App. 6). Accordingly, when the Secretary issued regulations regarding the right of first refusal for sales of real property, the regulations included a provision making them also applicable to sales of stock "as far as practicable" and requiring a mixed-blood to offer his stock "to the members of the tribe in accordance with the provisions set forth in the Articles of Incorporation and in the certificate of stock of such corporation." 25 C.F.R. (1965 Cum. Pocket Supp.) 243.12.

As the foregoing makes clear, the Corporation itself created the right of first refusal with respect to its stock. The Corporation's action imposed no statutory duty upon the Secretary; it could not serve to postpone termination; and it did not create any status in the mixed-bloods between wardship and

termination. There is no indication that the mixed-bloods themselves thought the right of first refusal had any of these effects; instead, after termination they considered the stock their own personal property to do with as they pleased.

Even if the issue in this regard involved "*express rights contained in the statute*" (Pet. Br. 48), which it surely does not, the right of first refusal created no duty on the part of the United States toward the selling mixed-bloods. To be sure, the other members of the Tribe were entitled to receive an offer before the mixed-blood seller disposed of his shares. But that is not the complaint here. Plaintiffs are those who desired to sell their stock and in fact did so. And they complain of defects in their own affidavits,⁴⁴ which attested to their compliance with the right of first refusal. The United States violated no duty to the selling mixed-bloods who, of course, were not in the category of those entitled to the right of first refusal. A seller could not accept his own offer and thereby exercise a right of first refusal to buy his own stock.⁴⁵

⁴⁴ See note 47 *supra*.

⁴⁵ Petitioners make much of a supposed error of the court of appeals in viewing the phrase "members of the Tribe" as meaning the Tribe, that is, the still unterminated Tribe, as distinguished from the terminated mixed-bloods (Pet. Br. 47-50). But the court of appeals simply stated (App. 580):

Considerable argument is presented as to whether or not the mixed-bloods were members of the Tribe for the purpose of the right of refusal or whether the right was in the Tribe as such or in the members, but *this need not be decided* for it is clear that the plaintiffs themselves

In sum, the court of appeals in *Reyes* correctly held that the "right of refusal thus created no duty on the part of the Government to the then terminated mixed-blood plaintiffs who were seeking to sell their shares of stock" and that (App. 580):

Likewise the procedures and documents devised to carry out the right of refusal and their execution and delivery created no such duty on the part of the United States to the plaintiffs. The statute expressly provides for termination of the Government's relationship with the individual mixed-bloods. The provisions are clear and the termination was accomplished and is final. It is clearly within the power of Congress and no one else to provide for such an end to the relationship between these individuals and the Government. *United States v. Waller*, 243 U.S. 452; *United States v. Nice*, 241 U.S. 591; *Tiger v. Western Investment Co.*, 221 U.S. 286. It is not for administrative officials or for the courts to modify this statutory termination by the creation of some status lying between wardship and complete termination.

had no right under the right of refusal. * * * [Emphasis added.]

We agree with the court of appeals that it is unnecessary to decide this question because it is irrelevant to the issue at hand. The right of first refusal stems from Article VIII of the Corporation's articles of incorporation, which requires the offer to be made to "members of the tribe, including the mixed-blood and full-blood members thereof" (Ex. App. 6). It is obvious that the Corporation did not adopt this requirement for the benefit of the mixed-blood seeking to dispose of his shares.

While we therefore conclude that petitioners are not entitled to recover against the United States in the *Affiliated Ute* case or in the *Reynos* case, we add a word about the nature of the relief petitioners now request against the government. In *Reynos*, the individual mixed-blood plaintiffs sought a "money judgment against defendants and each of them for the difference between the value of the consideration actually received by plaintiffs in exchange for their said securities and the fair value thereof" (App. 11-12 [Third Amended Complaint]). In the *Affiliated Ute* case, however, plaintiff sought a "pro rata" distribution of the mineral estate to each mixed-blood and a determination that Affiliated Ute Citizens, rather than the Ute Distribution Corporation, is entitled to manage this property jointly with the full-bloods (App. 538-539 [Complaint]).

Petitioners cannot have it both ways. If the Corporation is invalid, as petitioners argue in *Affiliated Ute*, then its stock is worthless; but if that is so, then plaintiffs in *Reynos* are not entitled to the difference between what they received for the stock and the "fair value" they believe they should have received.

Apparently recognizing the basic inconsistency of their positions in these two consolidated cases, petitioners now for the first time proffer an entirely new claim (Pet. Rr. 51-55)—that they are entitled to have the Corporation declared invalid and to recover against the United States the royalties and other payments that they would have received if they had not sold their stock (*id.* at 54). This claim was never

raised before the district court or the court of appeals;⁵⁰ neither court ever considered such a contention. Indeed, in view of the amounts paid for their shares it appears quite likely that on this theory many of the plaintiffs in *Reynos* have suffered no damages at all.⁵¹ In this situation, petitioners' newly

⁵⁰ Nor was it raised in petitioners' Petition for a Writ of Certiorari or Reply Brief filed in response to respondents' briefs in opposition. See Rule 23(1)(c) of the Rules of this Court.

⁵¹ Petitioners' calculations (Pet. Br. 54 n. 172) of what these royalties and other payments totalled are not accurately substantiated and appear to involve duplications and other serious errors. First, petitioners refer to Appendix 528-529 and somehow arrive at the figure of \$853.97 per share. But the only payment mentioned by the district court on pages 528-529 of the Appendix is the sum of \$1,173,632.23, which was distributed to the stockholders of the Corporation as their portion of a \$7,900,000 judgment against the United States in 1965. This comes to about \$240 per share. The only other amounts even referred to by the district court on the cited pages are the \$1200 held in trust for each mixed-blood to defray costs of litigation (part of which had been expended), and another \$7,000,000 judgment against the United States, which had not even been appropriated, let alone divided between the various bands of the Ute Tribe (see note 4, *supra*) and then between the full-bloods and mixed-bloods and distributed through the Corporation. (The court also mentioned a \$500,000 special appropriation that was pending before Congress.)

Petitioners also refer to App. 503, which supposedly represents another \$357 per share. But that reference consists only of a statement by the Superintendent of the Reservation in 1964 mentioning the judgment of \$7,900,000 against the United States, which petitioners have already included in their calculations, and the possibility of further judgments.

Petitioners also cite App. 258, 326-328, for the proposition that mineral royalties averaged \$71 per share per year; they

devised claim comes too late for consideration by this Court. See *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 147 n.2; *Lawn v. United States*, 355 U.S. 339, 362-363 n.16; *Husty v. United States*, 282 U.S. 694, 701-702; *Duignan v. United States*, 274 U.S. 195, 200. In any event, for the reasons previously stated (*supra* pp. 37-47), there was no breach by the United States of any duty owing to petitioners, under any theory of recovery.

multiply this by 8 and arrive at an additional sum of \$568. per share. App. 258 is a reference to a witness' statement that since 1961, \$710 per share has been paid by the Corporation to its shareholders. Since the plaintiffs in *Reynos* did not sell until 1963 or 1964, they have already received part of this \$710. Moreover, the witness said that part of this \$710 was derived from claims against the United States, which petitioners have already included in their figures. The other pages cited, App. 326-328, give the breakdown of the \$710 per share paid since 1961: "\$462 of that amount has come from claims" and "248.50 has come from oil and gas leases, royalties, rentals, and proceeds of the reservation, prospecting" (App. 328). Payments after 1963 totalled \$571 per share (App. 327-328).

In view of the facts that plaintiffs sold their shares for between \$300 and \$700 per share (App. 529) and that the great majority of these sales took place well after 1963 (App. 475, 479-484, 487-495, 497-498), it seems certain that if the measure of damages is, as petitioners now claim for the first time, the amount of payments from the Corporation that plaintiffs would have received, less the amount they received from their sale of stock, many of these plaintiffs have suffered no damages whatsoever. It is clear in any event that the figure of \$1,778.97 per share that petitioners represent in their brief, at p. 54 n. 172, is inaccurate.

III.

Under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 Thereunder a Seller may Recover Against the Agent who Transfers His Securities Where the Agent Develops a Market for the Seller's Securities and Reaps a Financial Gain from the Buyers by Facilitating Transfers of These Securities, but Fails to Disclose to the Seller the Agent's Financial Interest in the Transaction and the Fact That the Securities Are Selling for a Significantly Higher Price in the Market Developed by the Agent

A.

Statement Relating to the Claims Under the Securities Laws

As previously stated, *supra*, pp. 4 to 6, the Securities and Exchange Commission is vitally interested in the issues in the *Reynos* case involving Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. 240.10b-5, which are presented by petitioners' claims against the First Security Bank of Utah, N.A. and its employees, John B. Gale and Verl Haslem.

With respect to the Rule 10b-5 claims against these defendants, the parties are in apparent disagreement about the underlying facts and the accuracy of the findings of fact by the district court. The Commission's concern, however, is with Rule 10b-5. This portion of the brief therefore deals solely with the proper interpretation and application of that provision in light of the findings stated in the opinion of the court of appeals or in the opinion of the district court if not contradicted or rejected by

the court of appeals. We make no attempt to resolve the controversy regarding the underlying facts.

After Ute Distribution Corporation had been formed, the Corporation and the Bank entered into an agreement on December 31, 1958, whereby the Bank became transfer agent for the 4900 shares of stock to be issued by the Corporation to the mixed-bloods (Ex. App. 13-15). Under this agreement the Bank also became the depository for the Corporation's funds and agreed to "issue checks against said funds, receive and hold documents, prepare and mail or otherwise deliver statements and reports, and generally conduct business for the Corporation" (*id.* at 14). The agreement further provided that the Corporation "will instruct the Bank from time to time concerning the Bank's duties" (*id.*).

Six months later, in July 1959, the Corporation's attorney wrote to the Bank informing it that the Corporation's stock certificates were to be held by the Bank rather than the individual shareholders (Ex. App. 19-20). The letter also directed the Bank's attention to a resolution of the Corporation²² and stated that "we trust you will impress upon anyone desiring to make a transfer that there is no possible way of determining the true value of this stock"

²² The resolution provided:

The Board of Directors by unanimous vote directed Attorney John S. Boyden to write a letter to the First Security Bank of Utah, N.A., asking said bank, as transfer agent, to discourage the sale of stock of the Ute Distribution Corporation by any of its stockholders and to emphasize and stress to the said stockholders the importance of retaining said stock. [Ex. App. 19:]

(*id.* at 19). (The Bank's retention of the stock certificates of course minimized "the dissemination of warnings [on the certificates] against disposal of the stock" (App. 516).)

Under the agreement, the Bank also assumed the duty of providing stock transfer services for individual shareholders of the Corporation (Ex. App. 13, 16-17; App. 581). In Roosevelt, Utah, where many mixed-bloods resided, the Bank maintained a branch office in part "for the purpose of facilitating and assisting mixed-bloods in the transfer" of their stock (App. 469, 581). Defendants Gale and Haslem served as Assistant Managers of the Roosevelt office; both were notaries public (*id.* at 467).

Because all sales of stock by the mixed-bloods before August 27, 1964, were subject to the right of first refusal (see p. 12, *supra*), and since the Bank had possession of the stock certificates, any mixed-blood seeking to dispose of his stock had to deal with and effect any transfers through the Bank. With respect to most of the sales by the plaintiffs in *Reynos*, when the right of first refusal was not exercised by members of the Tribe, and when the shares were then purchased by a non-Indian, Gale or Haslem prepared and notarized the necessary transfer papers, including affidavits by the mixed-blood sellers stating that they had received no less than the price at which the shares had been offered to members of the Tribe (App. 582).⁵³ The actual

⁵³ In some cases the affidavits were signed before having been filled in (App. 482-483) and in one case Gale dissuaded a seller from reading the affidavit before signing it (App. 483-484).

transfers of stock were handled in the Bank's office in Salt Lake City (App. 512).

In the *Reynos* case, a group of mixed-blood sellers (see n. 16, *supra*) sued the Bank and Gale and Haslem, claiming that in connection with their sales of stock the defendants had violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and were therefore liable to them for "the difference between the value of the consideration actually received by plaintiffs in exchange for their said securities and the fair value thereof" (App. 11-12).

The district court found that Bank employees Gale and Haslem were acting within the scope of their authority in connection with the transfers of stock in which they participated (App. 526) and concluded that the defendant Bank and defendants Gale and Haslem had engaged in a course of business or scheme to defraud the mixed-bloods that subparagraphs (1) and (3) of Rule 10b-5 expressly prohibited (*id.* at 527):

[T]he defendants Gale and Haslem devised a plan or scheme to acquire stock in the Ute Distribution Corporation from the mixed-bloods and to aid and abet others in acquiring such stock for their own profit, the profit of others and in order to promote bank deposits and activity in other respects. By means of withholding information necessary to render what was stated or implied by them not misleading, and in violation of their duties to make full and fair disclosure to the designated plaintiffs, they aided, abetted and assisted, or directly and completely accom-

plished the acquisition of said stock from each of the designated mixed-bloods for substantially less than the fair market value of said stock.

The elements of the scheme, as found by the district court, were intricate and varied, having as their objective the transfer of shares from their original mixed-blood holders to the defendant Bank employees and other non-Indians who were actively interested in purchasing and trading this stock. The "non-Indian" market for the shares was generally higher than the "Indian" market in which the mixed-bloods sold their shares. Mixed-bloods sold at prices ranging between \$300 and \$700 per share and averaging \$500 per share, while the same shares were selling in the non-Indian market for between \$500 and \$700 per share (App. 529). These defendants admittedly accepted from non-Indians, including out-of-state buyers, standing orders to buy stock in the Corporation (App. 76, 84, 522; Ex. App. 87-88, 91); in some cases potential purchasers maintained deposits at the Bank for the purpose of consummating the transactions (App. 522). The district court found that these defendants actively solicited offers to buy from non-Indians (App. 522) and received various fees, commissions, bonuses, tips and gratuities from non-Indians for their services in facilitating the transfer of this stock (App. 521).⁴⁴ In several cases these

⁴⁴ This finding is not inconsistent with the conclusion of the court of appeals that "The record does not show whether or not the defendant Gale participated for his personal profit or derived a personal profit from the purchase by other persons of shares of stock from the plaintiffs" (App. 584). The

defendants (in collaboration with used car dealers and other non-Indian potential purchasers) induced the mixed-bloods to sell their shares (App. 522).⁸⁸ In one case, Gale, who was also a Justice of the Peace, suggested to an Indian brought before him on a charge of intoxication that he sell his stock as a means of paying the fine for his drunkenness (App. 485). Since the district court found that the Bank and its employees, Gale and Haslem, had engaged in a scheme to defraud all of the plaintiffs, it held these defendants liable for damages suffered by each plaintiff (App. 537, 574).

The court of appeals reversed in part, finding liability under Rule 10b-5 only in those instances in which defendants Gale and Haslem personally purchased shares from a plaintiff for their own account or for the purpose of resale to an undisclosed principal at a higher price (App. 587).⁸⁹ Relying on

court there was apparently focusing on "profits" derived from resale of the stock at a higher price than that paid to plaintiffs, for the record is clear that Gale admitted receiving commissions and other payments for facilitating non-Indian purchases (App. 65, 76, 84, 88).

⁸⁸ In one case, a plaintiff made several sales of stock, the first of which was in exchange for a used car even though plaintiff was unable to drive. The district court found (App. 488):

[She] was in need of money and on public welfare at the time of the first sale and the second and third sales were made because she was in further need of money, having been taken off welfare by reason of the money which she was supposed to have received on the first sale. * * *

⁸⁹ The court of appeals noted that, together, Gale and Haslem purchased a total of 16 shares (App. 583-584). Of these,

subparagraph (2) of Rule 10b-5, which prohibits false and misleading statements and omissions in securities transactions, the court held "that the individual defendants made a misstatement of a material fact in representing, in those instances wherein they purchased stock for sale at a personal profit, that the prevailing price or market price was the figure at which their own purchase was made" (App. 585).

As to the other transactions, the court of appeals found that defendants did "no more than to perform ministerial functions required to carry out the transfer of the shares of stock" (App. 584). Although the conduct of the defendant Bank officials in encouraging and developing a non-Indian market in the stock was "probably not contemplated by the UDC-bank relationship" and "gave rise to some indirect benefits to the bank by way of increased deposits" (App. 583), the court held that this conduct "did not constitute a violation of any duty the bank may have had to the plaintiffs by contract or otherwise" (*id.*). The court rejected without explanation the district court's finding of a scheme to defraud by concluding: "The record does not support the trial court's finding of a conspiracy, plan, or scheme to violate any duties owed to the plaintiffs by any of the defendants" (App. 586).⁵⁷

8 shares were resold at a higher price (all by Gale); the record did not show whether higher resale prices were received for the other shares (*id.*).

⁵⁷ In those instances where the court found violations, it remanded on the question of damages, holding that the record

B.

The Non-Government Defendants Had a Duty to Disclose to Plaintiffs That They Had a Financial Interest in Plaintiffs' Sales of Stock and That the Stock Was Selling for a Higher Price in the Non-Indian Market

Section 10(b) of the Securities Exchange Act of 1934 makes it unlawful for "any person, directly or indirectly" to employ "in connection with the purchase or sale of any security * * * any manipulative or deceptive device or contrivance" that contravenes Commission rules. One such rule adopted by the Commission under this Section is Rule 10b-5, which makes it unlawful for "any person, directly or indirectly" to engage in fraudulent conduct in connection with securities transactions. The Rule expressly prohibits not only the making of "any untrue statement of a material fact" and omissions to state such facts (Rule 10b-5(2)), but also the use of "any de-

did not support the district court's computation of damages. The Commission disagrees with the court's statement that: "The measure of damages * * * is the profit made by the defendant on resale of stock purchased from the plaintiffs. If no resale was made or if the resale was not at arm's length, then the measure is the prevailing market price at the time of the purchase from the plaintiffs" (App. 587). The measure of damages should always be at least equal to the plaintiff's loss—that is, the difference between the price he received and the price he would have received had there been no fraudulent conduct (usually the fair market price). A measure of damages based upon the profits, if any, realized by the defendant is appropriate only if that amount is greater than the plaintiff's actual loss, the theory in such case being that the shares are held in constructive trust for the plaintiff and that the defendant should not be enriched by his wrongdoing. *Janigan v. Taylor*, 344 F.2d 781 (C.A. 1), certiorari denied, 382 U.S. 879.

vice, scheme, or artifice to defraud" (Rule 10b-5(1)) and the pursuit of "any act, practice, or course of business which operates * * * as a fraud upon any person" (Rule 10b-5(3)). These proscriptions are manifestly broad on their face, and are to be construed "not technically and restrictively, but flexibly to effectuate [their] remedial purposes," *Securities and Exchange Commission v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195.

The court of appeals properly held that the Bank and its employees, Gale and Haslem, violated Rule 10b-5(2) in connection with those transactions where the Bank employees purchased UDC shares from the plaintiffs as principals or as agents for undisclosed principals. In those cases, the

individual defendants made a misstatement of a material fact in representing * * * that the prevailing price or market price [of the shares] was the figure at which their own purchase was made. This representation was obviously false in those instances in view of the fact that they resold the shares almost immediately at a higher price. * * * [App. 585.]

However, the court of appeals apparently concluded that no other violations of Rule 10b-5 could be found unless the defendants "purchased stock [from the plaintiffs] for sale at a personal profit" (App. 585) and unless the record contained "evidence relating to reliance by the plaintiffs on the representations of the defendants Gale and Haslem" (App. 586). In the Commission's view, Rule 10b-5 is not limited to those situations alone. Rule 10b-5(1) and (3) require no

more than a showing that defendants pursued a "course of business" or employed a "device, scheme or artifice" that operated as a fraud on sellers. Assessing the non-government defendants conduct as set forth in the opinion of the court of appeals, we submit that they pursued a "course of business" and employed "device[s], scheme[s], [and] artifice[s]" that operated as a fraud on all of the mixed-blood sellers of UDC shares because these defendants devised and executed a systematic plan to induce the mixed-blood holders of UDC stock to dispose of their shares without disclosing to them material facts that reasonably could have been expected to influence their investment decisions.

The court of appeals emphasized that defendants Gale and Haslem merely performed "ministerial functions required to carry out the transfer of the shares of stock" in those instances where they did not themselves purchase or represent purchasers of stock from the Indians (App. 584). But defendants' involvement in these transactions as transfer agents and notaries public hardly constituted the sum and substance of their interest in the sale of UDC stock by Indians to non-Indians. The court of appeals itself observed that (App. 583):

The record shows that the bank officials * * * were active in encouraging a market for the UDC stock among non-Indians. This was probably not contemplated by the UDC-bank relationship. This gave rise to some indirect benefits to the bank by way of increased deposits, but it did not constitute a violation of any duty

the bank may have had to the plaintiffs by contract or otherwise.

Defendants encouraged and developed this market for UDC shares by, among other things, accepting standing orders to buy UDC stock from non-Indians, who in many instances maintained deposits at the Bank to cover purchases by them and on their behalf (App. 522; Ex. App. 87-88, 91; see also App. 75-76, 84-85 [testimony of defendant Gale]). In addition to receiving increased deposits by developing a market for these shares, defendants also received, according to the findings of the district court, "various fees, commissions, bonuses, tips, or gratuities from non-Indians for their services in facilitating the transfer" of UDC stock from the mixed-bloods to non-Indians (App. 521). The court of appeals also found that because the Bank and its defendant employees had developed a market for the stock they were "entirely familiar with the prevailing market for the shares at all material times" (App. 586)—a market in which the price per share averaged \$500 for sales by the mixed-bloods, but in which sales between non-Indians ranged between \$500 and \$700 per share (App. 529). Yet the Bank itself had acknowledged its "duty to see that these transfers were properly made" and that it "would be acting for the individual stockholders" in such transfers (Ex. App. 16-17). And, as the court of appeals also found, the mixed-blood sellers "considered these defendants to be familiar with the market for the shares of stock and relied upon them when they desired to sell their shares" (App. 585); indeed they had no

choice since the Bank had physical possession of their stock certificates and handled the documents necessary for transfers.

Although on these facts, together with defendants' purchases on their own behalf, defendants' activities would bring them squarely within the definition of "brokers" and "dealers" in Sections 3(a)(4) and (5) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(4) and (5), those Sections expressly exempt banks from coverage. Sections 3(a)(4) and (5) provide:

(4) The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank.

(5) The term "dealer" means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.

Therefore, unlike other brokers and dealers in securities, neither the defendant bank nor its employees were required to register as broker-dealers under the Act. But they nevertheless remained subject to the broad antifraud prohibitions of Section 10(b) and the Commission's Rule 10b-5 thereunder, which apply to "any person," whether a registered broker-dealer or not.⁵⁵ With respect to the obligations of dis-

⁵⁵ Under Section 15(c)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(c)(1), brokers and dealers are pro-

closure imposed by those provisions, defendants thus had obligations analogous to those that have been imposed on other professionals in the securities business. For such obligations stem fundamentally not from the fact of registration under the Securities Exchange Act (which is primarily a mechanism to identify the persons to be regulated and to control their entry into and operations within the securities industry), but rather from the fiduciary relationship between persons acting as brokers, such as the defendants here, and their customers.

We agree that if the Bank had operated merely as a transfer agent, it would have had no duty of disclosure. However, when the Bank and its employees extended their activities beyond this, when they encouraged and developed a market for the shares, when they acted on behalf of non-Indian purchasers and received from them commissions, gratuities, bank deposits and other forms of remuneration and profit from their activities,⁵⁹ in short, when they

hibited from engaging in "any manipulative, deceptive, or other fraudulent device or contrivance"—much the same language as appears in Section 10(b)—and the Commission is authorized to "define such devices or contrivances" by rule. Rule 15c1-2, 17 C.F.R. 240.15c1-2, which supplies this definition, is virtually coterminous with Rule 10b-5.

⁵⁹ Since the Bank also had physical possession of the shares owned by the mixed-bloods, the non-government defendants' activities were in several respects similar to market-making, which involves the purchase and sale of particular securities at prices set from time to time by the market-maker. Such a market-maker ordinarily maintains an "inventory" consisting of shares of each stock in which he makes a market. He profits by selling shares from this inventory at a higher price than he paid for them and in some cases by selling

engaged in all these "non-ministerial" activities in connection with the sales at the same time they were obligated to act on behalf of the mixed-blood sellers, they had a duty of disclosure. They could not participate in any transactions in UDC shares—even to the extent of performing what the court below referred to as "ministerial functions"—without disclosing to the selling mixed-bloods that the Bank and its employees had a personal economic interest in the consummation of their transactions and that the stock was being sold for significantly higher prices between non-Indians.

In *Securities and Exchange Commission v. Capital Gains Research Bureau, Inc.*, *supra*, 375 U.S. at 194, this Court defined the obligations of fiduciaries in securities transactions. The Court held that " 'Fraud * * * includes all acts, omissions and concealments which involve a breach of legal or equitable duty, trust, or confidence, justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another' " and that:

Courts have imposed on a fiduciary, an affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts,' as well as an affirmative obligation 'to employ reasonable care to avoid misleading' his clients."

shares "short" (i.e., selling borrowed shares) and covering with shares purchased at a lower price than that at which he sold. Obviously, a market cannot be made unless shares are readily available for purchase, sale and the market-maker's inventory. See Rule 17a-9(f) (1) under the Securities Exchange Act of 1934, 17 C.F.R. 240.17a-19(f); *Chasins v. Smith, Barney & Co.*, 438 F. 2d 1167 (C.A. 2).

* See also *Errion v. Connell*, 236 F. 2d 447 (C.A. 9); *McClure v. Borne Chemical Co.*, 292 F. 2d 824 (C.A. 3), certior-

In a situation analogous to this case, the Court of Appeals for the Second Circuit held that under certain circumstances a broker-dealer who makes recommendations to an investor has an affirmative obligation to disclose the fact that the broker-dealer is a market-maker in the securities recommended, whether or not the price at which the securities are sold to the investor is fair; failure to make such disclosure constitutes a violation of Section 10(b) and of Rule 10b-5. *Chasins v. Smith, Barney & Co.*, 438 F. 2d 1167 (C.A. 2).^a As the court there observed, 438 F. 2d at 1172:

An investor who is at least informed of the possibility of such adverse interests, due to his broker's market making in the securities recommended, can question the reasons for the recommendations. The investor * * * must be permitted to evaluate overlapping motivations through appropriate disclosures, especially where one motivation is economic self interest * * *.

To be sure, in some of the transactions in this case defendants handled the transfer of stock without making any representations or recommendations. But defendants could not simply stand mute while they facilitated the mixed-bloods' sales to used car dealers and others seeking profit in the non-Indian market that, as the court of appeals found, the defendants themselves had encouraged and developed and were

ari denied, 368 U.S. 939; *Rekant v. Desser*, 425 F. 2d 872 (C.A. 5).

^a See *Hughes v. Securities and Exchange Commission*, 174 F. 2d 969 (C.A.D.C.).

entirely familiar with." The mixed-bloods had the right to know that defendants were reaping financial benefits from their sales and that their shares were selling for a significantly higher price in the non-Indian market that defendants had developed.

By failing to make these disclosures, defendants engaged in a "course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security" in violation of Rule 10b-5(3); their activities also constituted a "scheme * * * to defraud" in violation of Rule 10b-5(1). The fraudulent course of business pursued by defendants is in some respects unique and for that reason previous cases involve only analogous activities. But Rule 10b-5 encompasses "[n]ovel or atypical" as well as "garden type variety" frauds, *A. T. Brod & Co. v. Perlow*, 375 F. 2d 393, 397 (C.A. 2); see also *Carroll v. First National Bank*, 413 F. 2d 353, 357 (C.A. 7), certiorari denied, 396 U.S. 1003, and it prohibits the course of conduct engaged in by the non-government defendants here.

In addition, at least in the circumstances of this case where the misconduct involves a failure to disclose material facts rather than the making of affirmative statements that are false and misleading,

* Compare *Speed v. Transamerica Corp.*, 99 F. Supp. 808, 829 (D. Del.); *Cochran v. Channing Corp.*, 211 F. Supp. 239, 243 (S.D.N.Y.); *Trussell v. United Underwriters, Ltd.*, 288 F. Supp. 757, 767 (D. Colo.), all recognizing that total silence can violate paragraphs (1) and (3) of Rule 10b-5. See also *Strong v. Repide*, 213 U.S. 419; *Brennan v. Midwestern Union Life Insurance Co.*, 417 F. 2d 147 (C.A. 7); *List v. Fashion Park, Inc.*, 340 F. 2d 457 (C.A. 2), certiorari denied, 382 U.S. 811.

proof of reliance is not a prerequisite to recovery; it is wholly conjectural whether an investor would in fact have acted differently had he been advised of all material facts." In such situations, it is necessary only that the facts withheld be "material"; that is, information a reasonable investor "might have * * * considered important" in determining his course of action. *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 384; see also *Securities and Exchange Commission v. Texas Gulf Sulphur*, 401 F. 2d 833, 849, certiorari denied *sub nom. Coates v. Securities and Exchange Commission*, 394 U.S. 976. If the defendant owed an obligation of disclosure, and if it is shown that "material" facts were withheld, this proof suffices to establish the requisite element of causation in fact. *Chasins v. Smith, Barney & Co.*, *supra*, 438 F. 2d at 1172.

Here there can be no doubt of the materiality of the facts not disclosed by the defendants—that the shares were selling for a significantly higher price in the non-Indian market and that defendants had an economic stake over and above their fee for acting as transfer agents in facilitating transfers. Had the mixed-blood sellers known of these facts they might not have sold at all; at the least they might have sought a higher price for their shares. That some of the mixed-bloods might have been unsophisticated about matters of finance is not a reason for denying them relief. Rule 10b-5 surely does not mean that

⁶³ See Bromberg, *Securities Law: Fraud—S.E.C. Rule 10b-5*, part 8.6, p. 209; 6 Loss, *Securities Regulation* 3878-3880 (1969). *List v. Fashion Park, Inc.*, 340 F. 2d 457 (C.A. 2), is not to the contrary.

the more gullible the seller the more a fiduciary is free to engage in fraudulent practices in connection with sales of the seller's securities.

CONCLUSION

With respect to petitioners' claims against the United States, the judgments of the court of appeals in *Affiliated Ute Citizens* and *Reynos* should be affirmed. With respect to petitioners' claims against the Bank and its employees under the Securities Exchange Act of 1934, the judgment of the court of appeals rejecting petitioners' claims in *Reynos* should be reversed.

Respectfully submitted.

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SEPTEMBER 1971.

APPENDIX

The Ute Partition Act of August 27, 1954, 68 Stat. 868, as amended, 25 U.S.C. 677—677aa, provides:

§ 677. Purpose.

The purpose of sections 677 to 677aa of this title is to provide for the partition and distribution of the assets of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah between the mixed-blood and full-blood members thereof; for the termination of Federal supervision over the trust, and restricted property, of the mixed-blood members of said tribe; and for a development program for the full-blood members thereof, to assist them in preparing for termination of Federal supervision over their property. (Aug. 27, 1954, ch. 1009, § 1, 68 Stat. 868.)

§ 677a. Definitions.

For the purposes of sections 677 to 677aa of this title—

(a) "Tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah.

(b) "Full-blood" means a member of the tribe who possesses one-half degree of Ute Indian blood and a total of Indian blood in excess of one-half, excepting those who become mixed-bloods by choice under the provisions of section 677c of this title.

(c) "Mixed-blood" means a member of the tribe who does not possess sufficient Indian or Ute Indian blood to fall within the full-blood class as herein defined, and those who become mixed-bloods by choice under the provisions of section 677c of this title.

(d) "Secretary" means Secretary of the Interior.

(e) "Superintendent" means the Superintendent of the Uintah and Ouray Reservation, Utah.

(f) "Asset" means any property of the tribe, real, personal or mixed, whether held by the tribe or by the United States in trust for the tribe, or subject to a restriction against alienation imposed by the United States.

(g) "Adult" means a member of the tribe who has attained the age of twenty-one years. (Aug. 27, 1954, ch. 1009, § 2, 68 Stat. 868.)

§ 677b. Method of determining Ute Indian blood.

For the purposes of sections 677 to 677c of this title Ute Indian blood shall be determined in accordance with the constitution and bylaws of the tribe and all tribal ordinances in force and effect on August 27, 1954. (Aug. 27, 1954, ch. 1009, § 3, 68 Stat. 868.)

§ 677c. Transfer of members from full-blood roll to mixed-blood group; time; certification by Secretary.

Any member of the tribe whose name appears on the proposed roll of full-blood members as provided in section 677g of this title and any person whose name is added to such proposed roll as the result of an appeal to the Secretary may apply to the Superintendent to become identified with and a part of the mixed-blood group: *Provided*, That such application is made within thirty days subsequent to the publication of such proposed roll or in the event of an appeal within

thirty days subsequent to notification of the decision on said appeal: *And provided further*, That before such transfer is made upon the official rolls the Secretary shall first certify that, in his opinion, such change in status is not detrimental to the best interest of the person seeking such change. (Aug. 27, 1954, ch. 1009, § 4, 68 Stat. 868.)

§ 677d. Restriction of tribe to full-blood members after publication of final rolls; non-interest of mixed-blood members; new membership.

Effective on the date of publication of the final rolls as provided in section 677g of this title the tribe shall thereafter consist exclusively of full-blood members. Mixed-blood members shall have no interest therein except as otherwise provided in sections 677 to 677aa of this title. New membership in the tribe shall thereafter be controlled and determined by the constitution and bylaws of the tribe and ordinances enacted thereunder. (Aug. 27, 1954, ch. 1009, § 5, 68 Stat. 868; Aug. 2, 1956, ch. 880, § 1, 70 Stat. 936.)

§ 677e. Organization of mixed-blood members; constitution and bylaws; representatives; actions in absence of organization.

The mixed-blood members of the tribe, including those residing on and off the reservation, shall have the right to organize for their common welfare, and may adopt an appropriate constitution and bylaws which shall become effective when ratified by a majority vote of the adult mixed-blood members of the tribe at a

special election authorized and called by the Secretary under such rules and regulations as he may prescribe. Such constitution may provide for the selection of authorized representatives who shall have power to take any action that is required by sections 677 to 677aa of this title to be taken by the mixed-blood members as a group: *Provided*, That nothing herein contained shall be construed as requiring said mixed-blood Indians to so organize if such organization is by them deemed unnecessary. In the event no such approved organization is effected, any action taken by the adult mixed-blood members, by majority vote, whether in public meeting or by referendum, but in either event, after such notice as may be prescribed by the Secretary, shall be binding upon said mixed-blood members of the tribe for the purposes of said sections. (Aug. 27, 1954, ch. 1009, § 6, 68 Stat. 868.)

§ 677f. Employment of legal counsel for mixed-blood members; fees.

The mixed-blood members of the tribe as a group may employ legal counsel to accomplish the legal work required on behalf of said group under the terms of sections 677 to 677aa of this title, and for any other purpose by them deemed necessary or desirable; the choice of counsel and fixing of fees to be subject to the approval of the Secretary until Federal supervision over all of the members of said group and their property is terminated in the manner provided in section 677o of this title. (Aug. 27, 1954, ch. 1009, § 7, 68 Stat. 869.)

§ 677g. Membership rolls of full-blood and mixed-blood members; preparation and initial publication; appeal from inclusion or omission from rolls; finality of determination; final publication; inheritable interest; future membership.

The tribe shall have a period of thirty days from August 27, 1954 in which to prepare and submit to the Secretary a proposed roll of the full-blood members of the tribe, and a proposed roll of the mixed-blood members of the tribe, living on August 27, 1954. If the tribe fails to submit such proposed rolls within the time specified in sections 677 to 677aa of this title, the Secretary shall prepare such proposed rolls for the tribe. Said proposed rolls shall be published in the Federal Register, and in a newspaper of general circulation in each of the counties of Uintah and Duchesne in the State of Utah. Any person claiming membership rights in the tribe, or an interest in its assets, or a representative of the Secretary on behalf of any such person, within sixty days from the date of publication in the Federal Register, or in either of the papers of general circulation, as hereinbefore provided, whichever publication date is last, may file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from either of such proposed rolls. The Secretary shall review such appeals and his decisions thereon shall be final and conclusive. After disposition of all such appeals to the Secretary, and after all transfers have been made pursuant to section 677c of this title the roll of the full-blood members of the tribe, and the roll of the mixed-blood members of the tribe, shall

be published in the Federal Register, and such rolls shall be final for the purposes of sections 677 to 677aa of this title, but said sections shall not be construed as granting any inheritable interest in tribal assets to full-blood members of the tribe or as preventing future membership in the tribe, after August 27, 1954, in the manner provided in the constitution and bylaws of the tribe. (Aug. 27, 1954, ch. 1009, § 8, 68 Stat. 869; Aug. 2, 1956, ch. 880, § 2, 70 Stat. 936.)

§ 677h. Sale or other disposition of certain described lands; funds; relief of United States from liability; assigned lands.

The business committee of the tribe for and on behalf of the full-blood members of said tribe, and the duly authorized representatives for the mixed-blood members of said tribe, acting jointly, are authorized, subject to the approval of the Secretary, to sell, exchange, dispose of, and convey to any purchaser deemed satisfactory to said committee and representatives, any or all of the lands of said tribe described as follows, to wit: [Omitted.]

All such sales, exchanges, or other dispositions shall be made upon such terms as said committee and said authorized representatives shall deem satisfactory and may be made pursuant to bids or at private sale, and all funds or other property derived from such sales, exchanges, or other dispositions shall be subject to the terms of sections 677 to 677aa of this title. Consent by the tribal business committee and said authorized representatives to the sale, exchange, or other disposal of the lands herein described shall relieve the United States of any liability result-

ing from such sale, exchange, or other disposition. The tribal business committee and said authorized representatives are further authorized to sell or dispose of tribal assigned lands to the assignees thereof under such terms and conditions as may be agreed upon by the said tribal business committee and said authorized representatives with the assignees, subject, however, to the approval of the Secretary. (Aug. 27, 1954, ch. 1009, § 9, 68 Stat. 869.)

§ 677i. Division of assets; basis; prior alienation or encumbrance; partition by Secretary upon nonagreement; assistance; management of claims and rights; division of net proceeds; applicability of usual processes of the law to originally owned stock of corporate representative and to corporate distributions.

The tribal business committee representing the full-blood group, and the authorized representatives of the mixed-blood group, within sixty days after the publication of the final membership roll, as provided in section 677g of this title, shall commence a division of the assets of the tribe that are then susceptible to equitable and practicable distribution. Such division shall be by agreement between them subject to the approval of the Secretary. Said division shall be based upon the relative number of persons comprising the final membership roll of each group. After such division the rights or beneficial interests in tribal property of each mixed-blood person whose name appears on the roll shall constitute an undivided interest in and to such property which may be inherited or bequeathed, but shall be subject to alienation or

encumbrance before the transfer of title to such tribal property only as provided in sections 677 to 677aa of this title. Any contract made in violation of this section shall be null and void. If said groups are unable to agree upon said division within a period of twelve months from the date of such commencement, or any authorized extension of said period granted within the discretion of the Secretary, the Secretary is authorized to partition the assets of the tribe in such manner as in his opinion will be equitable and fair to both groups. Such partition shall give rise to no cause of action against the United States and the costs of such partition shall be paid by the tribe. The Secretary is authorized to provide such reasonable assistance as may be requested by both groups, or by either group, in formulation and execution of a plan for the division of said assets, including necessary technical services of Government employees at Fort Duchesne, Utah, and arranging for necessary consultations with representatives of Federal departments and agencies, officials of the State of Utah, and political subdivisions thereof, and members of the tribe. All unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall be managed jointly by the Tribal Business Committee and the authorized representatives of the mixed-blood group, subject to such supervision by the Secretary as is otherwise required by law, and the net proceeds therefrom after deducting the costs chargeable to such management shall first be divided between the full-blood and mixed-

blood groups in direct proportion to the number of persons comprising the final membership roll of each group and without regard to the number of persons comprising each group at the time of the division of such proceeds.

The stock of any corporation organized by the mixed-blood group for the purpose of empowering the officers of such corporation to act as the authorized representatives of said mixed-blood group in the joint management with the tribe and in the distribution and unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall not be subject to mortgage, pledge, hypothecation, levy, execution, attachment or other similar process, while such stock remains in the ownership of the original stockholder or his heirs or legatees, but the interest of stockholders in any distribution by such corporation shall be subject to the usual processes of the law. (Aug. 27, 1954, ch. 1009, § 10, 68 Stat. 873; Sept. 25, 1962, Pub. L. 87-698, 76 Stat. 597.)

§ 677j. Advances or expenditures from tribal funds; restrictions on mixed-blood group until adoption of plan for terminating supervision.

Notwithstanding any other provision of existing law, the tribal funds now on deposit or hereafter deposited in the United States Treasury to the credit of the tribe or either group thereof, shall be available for advance to the tribe or the

¹ So in original. Probably should be "of".

respective groups, or for expenditure, for such purposes, including per capita payments; as may be designated by the Tribal Business Committee for the full-blood members, and by the authorized agents of the mixed-blood members, and in either event subject to the approval of the Secretary: *Provided*, That the aggregate amount of the expenditures and advances authorized by this section for the mixed-blood group shall not exceed 50 per centum of the total funds of said mixed-blood group after such division, until said mixed-blood group has adopted a plan approved by the Secretary for termination of Federal supervision of said mixed-blood group, as required under section 677l of this title. After such termination of Federal supervision, per capita payments to the mixed-blood group shall not be subject to approval of the Secretary. (Aug. 27, 1954, ch. 1009, § 11, 68 Stat. 873.)

§ 677k. Adjustment of debts in making per capita payments to mixed-blood members; execution of mortgages on property.

Fifty per centum of all per capita payments to any individual mixed-blood member made pursuant to any division or distribution under sections 677 to 677aa of this title shall have deducted therefrom any sum or sums of money owed by such member to the tribe, whether due or to become due, unless in the opinion of the Secretary said debts are not adequately secured in which event the entire per capita payment shall be subject to such offset. Any other division, partition or distribution of property to any individual mixed-blood member made pursuant to sections 677 to 677aa of this title shall be subject to a mortgage to be made in favor of

the tribe securing the payment of all sums of money owed by him to the tribe on the date of such division, partition or distribution to such individual mixed-blood member. The Secretary shall require the execution of any mortgage required under this section as a condition to any such division, partition or distribution. (Aug. 27, 1954, ch. 1009, § 12, 68 Stat. 874.)

§ 677L. Distribution to individual members of mixed-blood group; preparation and approval of plan; assistance; provisions permitted in plan.

After the adoption of a plan for the division of the assets between the two groups, a plan for distribution of the assets of the mixed-blood group to the individual members thereof shall be prepared and ratified by a majority of said group, within the period of six months from such adoption and presented to the Secretary for approval. The Secretary is authorized to provide such reasonable assistance, including necessary technical service of Government employees at Fort Duchesne, Utah, and arranging for necessary consultations with representatives of Federal departments and agencies, officials of the State of Utah and political subdivisions thereof, as may be required by the mixed-blood group in the preparation of such plan.

The plan for division of the assets among the members of the mixed-blood group may include:

- (1) Complete disposition of all cash assets of said group, reserving, however, sufficient funds to cover—

(i) the proportionate share of said mixed-blood group in and to all expenses incurred in effecting the purposes of sections 677 to 677aa of this title, including, but not limited to, the necessary expense incurred under this section and section 677m of this title;

(ii) the just and proportionate share of the mixed-bloods in the expense incurred in the prosecution of the claims of the tribe, or the bands thereof, against the United States; and

(iii) the determinable and estimated administrative costs and expenses of any mixed-blood organization authorized by sections 677 to 677aa of this title, including lawful and reasonable salaries and fees of authorized agents, officers and employees of said mixed-blood group.

(2) Partition of the lands of the mixed-blood group, excepting all gas, oil, and mineral rights, to corporations, partnerships, or other legal entities, and to trustees, and the individual members of said groups, quality and quantity relatively considered, according to the respective rights and interests of the parties, located so as to embrace, as far as practicable, any improvements lawfully made by the person or persons receiving such land. The value of the improvements made, under a valid lease or assignment from the tribe, shall be excluded from the valuation in making allotments to the lessee or assignee, and the land must be valued without regard to such improve-

ments unless the lease or assignment, under which said improvements were made, provided that such improvements should become the property of the tribe. In the making of any partition due consideration shall be given to all of the rights and interests of the person or persons receiving the property, and all of the rights and interests of the other members of the tribe. Two or more of the members of said mixed-blood group may obtain their share of property as tenants in common, as joint tenants, or in any other lawful manner when such members agree among themselves as to the manner in which they desire to receive such title. When it appears that an equitable partition cannot be made among the members of said mixed-blood group without prejudice to the rights and interests of some of them, and yet a partition is directed by the group, the members of said group may voluntarily determine compensation to be made by one party to another on account of the inequity. In all cases where equity is agreed upon by the members of said mixed-blood group, such compensatory adjustment among the parties, according to the principles of equity, must be approved by the Secretary. In the event of a failure to agree upon an equitable compensatory adjustment among the parties the Secretary shall make such adjustment and his decision shall be final.

(3) Organization of corporations for the grazing of livestock, handling of water and water rights, and the shares therein may be issued to the members of said group in

proportion to their interests in the assets of such corporations. When, in the opinion of said mixed-blood group, it is to the best interest of said group to transfer a portion of the assets of said group to a corporation or other legal entity for any purpose, the Secretary is authorized to make such transfer.

(4) A transfer of assets to one or more trustees designated by said group who shall hold title to all or any part of the property of said group for management or liquidation purposes under terms and conditions prescribed by said mixed-blood group. The Secretary is authorized to make such transfer, and approve the trustees, and the terms and conditions of the trust.

(5) Sale of any portion of the assets of said group subject to the approval of the Secretary. In addition to the sales herein otherwise authorized, authority is granted to the authorized representatives of said group to sell any property of said group when, in the opinion of the majority of said mixed-blood group, a practicable partition cannot be made, or for any other reason it is deemed to the best interests of the group, and the proceeds of such sales shall be distributed equitably among the members of said mixed-blood group; after deducting reasonable cost of sale and distribution.

(Aug. 27, 1954, ch. 1009, § 13, 68 Stat. 874.)

§ 677m. Same; procedure by Secretary if distribution not completed within seven years from August 27, 1954.

In the event all the tribal assets, susceptible to equitable and practicable distribution, distri-

buted to the mixed-blood group under the provisions of section 677i of this title, are not, within seven years from August 27, 1954, distributed to the individual mixed-blood members as contemplated in the plan to be adopted in accordance with the provisions of section 677l of this title, so as to effectively terminate Federal supervision over said assets, then the Secretary shall proceed to make such distribution in a manner, in his discretion, deemed fair and equitable to all members of said group, or convey such assets to a trustee for liquidation and distribution of the net proceeds, or convey such assets to the persons entitled thereto as tenants in common. (Aug. 27, 1954, ch. 1009, § 14, 68 Stat. 875.)

§ 677n. Disposal by mixed-blood members of their individual interests in tribal assets; requisites and conditions.

Any member of the mixed-blood group may dispose of his interest in the tribal assets prior to termination of Federal supervision, subject to the approval of the Secretary. In the event a member of the mixed-blood group determines to dispose of his interest in any of said real property at any time within ten years from August 27, 1954, he shall first offer it to the members of the tribe, and no sale of any interest, prior to termination of Federal supervision, shall be authorized without such offer to said members of the tribe in such form as may be approved by the Secretary. After termination of Federal supervision the requirement of such offer, in form to be approved by the Secretary, shall be a covenant to run with the land for said ten-year period, and shall be expressly provided in any

patent or deed issued prior to the expiration of said period. (Aug. 27, 1954, ch. 1009, § 15, 68 Stat. 876.)

§ 677o. Termination of restrictions on individually owned property of the mixed-blood group.

(a) Transfer of control of trust property; removal of sales restrictions.

When any mixed-blood member of the tribe has received his distributive share of the tribal assets distributed to the mixed-blood group under the provisions of section 677i of this title, whether such distribution is made in part or in whole to a corporation, partnership, or trusteeship in which he is interested, or otherwise, the Secretary is authorized and directed to immediately transfer to him unrestricted control of all other property held in trust for such mixed-blood member by the United States, and shall further remove all restrictions on the sale or encumbrance of trust or restricted property owned by such member of the tribe, and Federal supervision of such member and his property shall thereby be terminated, except as to his remaining interest in tribal property in the form of any unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other tribal assets not susceptible to equitable and practicable distribution, all of which shall remain subject to the terms of sections 677 to 677aa of this title, notwithstanding anything contained in said sections to the contrary.

(b) Partition or sale by Secretary prior to removal of restrictions.

Prior to the removal of restrictions in accordance with the provisions of subsection (a) of this section on land owned by more than one person, the Secretary may—

(1) upon request of any of the owners, partition the land and issue to each owner an unrestricted patent or deed for his individual share, unless such owner is a full-blood member of the tribe or other Indian who owns trust or restricted property, in which event a trust patent or restricted deed shall be issued and such trust may be terminated or such restrictions may be removed when the Secretary determines that the need therefor no longer exists;

(2) upon request of any of the owners and a finding by the Secretary that partition of all or any part of the land is not practicable, cause all or any part of the land to be sold at not less than the appraised value thereof and distribute the proceeds of sale to the owners: *Provided*, That before a sale any one or more of the owners may elect to purchase the other interests in the land, or the tribe may elect to purchase the entire interest in the land, at not less than the appraised value thereof.

(Aug. 27, 1954, ch. 1009, § 16, 68 Stat. 876.)

§ 677p. Tax exemption; exceptions and time limits; valuation for income tax on gains or losses.

No distribution of the assets made under the provisions of sections 677 to 677aa of this title

shall be subject to any Federal or State income tax: *Provided*, That so much of any cash distribution made under said sections as consists of a share of any interest earned on funds deposited in the Treasury of the United States shall not by virtue of said sections be exempt from individual income tax in the hands of the recipients for the year in which paid. Property distributed to the mixed-blood group pursuant to the terms of said sections shall be exempt from property taxes for a period of seven years from August 27, 1954, unless the original distributee parts with title thereto, either by deed, descent, succession, foreclosure of mortgage, sheriff's sale or other conveyance: *Provided*, That the mortgaging, hypothecation, granting of a right-of-way, or other similar encumbrance of said property shall not be construed as a conveyance subjecting said property to taxation under the provisions of this section. After seven years from August 27, 1954, all property distributed to the mixed-blood members of the tribe under the provisions of sections 677 to 677aa of this title, and all income derived therefrom by the individual, corporation, or other legal entity, shall be subject to the same taxes, State and Federal, as in the case of non-Indians; except that any corporation organized by the mixed-blood members for the purpose of aiding in the joint management with the tribe and in the distribution of unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall not be subject to corporate income taxes. Any

valuation for purposes of Federal income tax on gains or losses shall take as the basis of the particular taxpayer the value of the property on the date title is transferred by the United States pursuant to said sections. (Aug. 27, 1954, ch. 1009, § 17, 68 Stat. 876; Aug. 2, 1956, ch. 880, § 3, 70 Stat. 936.)

§ 677q. Applicability of decedents' estates laws to individual trust property of mixed-blood members.

The laws of the United States with respect to probate of wills, determination of heirship, and the administration of estates shall apply to the individual trust property of mixed-blood members of the tribe until Federal supervision is terminated. Thereafter, the laws of the several States, Territories, possessions, and the District of Columbia within which such mixed-blood members reside at the time of their death shall apply. (Aug. 27, 1954, ch. 1009, § 18, 68 Stat. 877.)

§ 677r. Indian claims unaffected.

Nothing in sections 677 to 677aa of this title shall affect any claim heretofore filed against the United States by the tribe, or the individual bands comprising the tribe. (Aug. 27, 1954, ch. 1009, § 19, 68 Stat. 877.)

§ 677s. Valid leases, permits, liens, etc., unaffected.

Nothing in sections 677 to 677aa of this title shall abrogate any valid lease, permit, license, right-of-way, lien, or other contract heretofore approved. (Aug. 27, 1954, ch. 1009, § 20, 68 Stat. 877.)

§ 677t. Water rights.

Nothing in sections 677 to 677aa of this title shall abrogate any water rights of the tribe or its members. (Aug. 27, 1954, ch. 1009, § 21, 68 Stat. 877.)

§ 677u. Protection of minors, persons non compos mentis, and other members needing assistance; guardians.

For the purposes of sections 677 to 677aa of this title, the Secretary shall protect the rights of members of the tribe who are minors, non compos mentis, or, in the opinion of the Secretary, in need of assistance in conducting their affairs, by such means as he may deem adequate, but appointment of guardians pursuant to State laws, in any case, shall not be required until Federal supervision has terminated. (Aug. 27, 1954, ch. 1009, § 22, 68 Stat. 877.)

§ 677v. Termination of Federal trust; publication; termination of Federal services; application of Federal and State laws.

Upon removal of Federal restrictions on the property of each individual mixed-blood member of the tribe, the Secretary shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to such individual is terminated. Thereafter, such individual shall not be entitled to any of the services performed for Indians because of his status as an Indian. All statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to such member over which supervision has been terminated, and the laws of the several States shall

apply to such member in the same manner as they apply to other citizens within their jurisdiction. (Aug. 27, 1954, ch. 1009, § 23, 68 Stat. 877.)

§ 677w. Presentation of development program for full-blood group to eventually terminate Federal supervision; annual progress reports.

Within three months after August 27, 1954, the business committee of the tribe representing the full-blood group thereof shall present to the Secretary a development program calculated to assist in making the tribe and the members thereof self-supporting, without any special Government assistance, with a view of eventually terminating all Federal supervision of the tribe and its members. The tribal business committee, representing the full-blood group shall, through the Secretary of the Interior, make a full and complete annual progress report to the Congress of its activities, and of the expenditures authorized under sections 677 to 677aa of this title. (Aug. 27, 1954, ch. 1009, § 24, 68 Stat. 877.)

§ 677x. Citizenship status unaffected.

Nothing in sections 677 to 677aa of this title, shall affect the status of the members of the tribe as citizens of the United States. (Aug. 27, 1954, ch. 1009, § 25, 68 Stat. 877.)

§ 677y. Execution by Secretary of patents, deeds, etc.

The Secretary shall have authority to execute such patents, deeds, assignments, releases, certificates, contracts, and other instruments, as may be necessary or appropriate to carry out

the provisions of sections 677 to 677aa of this title, or to establish a marketable and recordable title to any property disposed of pursuant to said sections. (Aug. 27, 1954, ch. 1009, § 26, 68 Stat. 877.)

§ 677z. Rules and regulations; tribal or group referenda.

The Secretary is authorized to issue rules and regulations necessary to effectuate the purposes of sections 677 to 677aa of this title, and may, in his discretion, provide for tribal or group referenda on matters pertaining to management or disposition of tribal or group assets. (Aug. 27, 1954, ch. 1009, § 27, 68 Stat. 878.)

§ 677aa. Procedure by Secretary upon non-agreement between mixed-blood and full-blood groups.

Whenever any action pursuant to the provisions of sections 677 to 677aa of this title requires the agreement of the mixed-blood and full-blood groups and such agreement cannot be reached, the Secretary is authorized to proceed in any manner deemed by him to be in the best interests of both groups. (Aug. 27, 1954, ch. 1009, § 28, 68 Stat. 878.)

The Act of August 15, 1894, 28 Stat. 305, as amended 25 U.S.C. 345, provides:

All persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment Act or under any grant made by Congress, or who claim to have been unlawfully de-

nied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States; and said district courts are given jurisdiction to try and determine any action, suit, or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty (and in said suit the parties thereto shall be the claimant as plaintiff and the United States as party defendant); and the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him, but this provision shall not apply to any lands held August 15, 1894, by either of the Five Civilized Tribes, nor to any of the lands within the Quapaw Indian Agency: *Provided*, That the right of appeal shall be allowed to either party as in other cases.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1971

No. 70-78

AFFILIATED. UTE CITIZENS OF THE STATE
OF UTAH, ET AL.,

Petitioners,

—v.—

UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

Petitioners reply to the respective briefs of the Respondents, the Defendant Intervenor¹ Ute Indian Tribe and Ute Distribution Corporation, and the respective *amici curiae*.

¹ "Defendant Intervenor" is the proper designation for these parties, even though they purport to appear *amicus curiae*, because they entered general appearances in the trial court as defendants (A.2, R. 63). The trial court thus has jurisdiction of both of them, and it appears that they should have appeared in this Court as parties under Rule 10-4. Since we agree that they are entitled to appear, we have interposed no objection to the manner in which they have done so.

Unless otherwise indicated, the abbreviation "Br." refers to the Brief of the United States and Brief for the Securities and Exchange Commission as *amicus curiae*, who are collectively referred to as "Government."

All abbreviations follow the style of the Brief for Petitioners, and references to "App." are to the Appendix of Pertinent Statutes and Regulations at the back of the Brief for Petitioners.

SUMMARY OF ARGUMENT

I

A. A provision in a plan for distribution of assets drawn by Indian wards permitting a corporate authorized representative may not alter provisions in an Act of Congress requiring a constitution and bylaws. The Secretary may not circumvent Congress' protections for the real property by placing the realty in a corporation, and thereafter treating "interests" in the real property in the form of corporate shares as personalty. Provisions of AUC's Constitution may not alter an Act of Congress dealing with requisites of a valid public referendum.

B. The United States had a duty under the "first refusal" option contained in 25 U.S.C. § 677n, because the UDC shares were an "interest" in real property, and also because the regulations, stock certificates and forms promulgated by the Secretary, each of which had the force of statute under 25 U.S.C. § 677z, extended the "first refusal" option to the stock sales.

C. The terminated Utes may not be estopped on the theory that they "received" or "accepted" the benefits of the

UDC stock, because they in fact did not do so. The stock was retained by the Bank, and the terminated Utes are not charged with constructive knowledge of the stock or the contents of the UDC Articles.

D. The Indians did not request termination, in any realistic sense of the word, as is demonstrated in many contemporary publications on the subject by Indian leaders.

E. This is not a dispute between Indians, because no property of the Tribe is at issue and the Tribe's alleged stock holdings were purchased with full knowledge of this lawsuit, and under the influence of a guardian which was a defendant in these proceedings at the time of the purchases.

II

A. 25 U.S.C. § 677(3) does not contemplate a corporate authorized representative because the section relates only to grazing and water corporations, authorizes only the transfer of *property* as distinguished from *powers*, and relates only to the unrestricted property of the individual mixed-blood rather than to restricted property such as the mineral estate. Any other construction would be inconsistent with other more specific provisions of the Termination Act. Subsequent Acts of Congress do not constitute a *nunc pro tunc* ratification of UDC because Congress did not have that situation in mind.

B. Even if a corporate authorized representative was proper under the Termination Act, as a factual matter UDC was not invested with the authorized representative powers. That conclusion follows from the fact that UDC was granted only the powers of Article V, Section 1(b) of the AUC constitution, while the authorized representative powers are provided only in Article V, Section 1 (a). Thus, UDC may manage unrestricted assets of individual members, if they con-

sent, but only AUC may manage the restricted mineral estate.

III

Jurisdiction under 25 U.S.C. § 345 is available to determine any individual interest in property set aside out of previously common Indian holdings, without regard for whether the interest is legal or beneficial. Jurisdiction is also available on the theory that the mineral estate was appurtenant to conventional allotments, title to which was confirmed to the terminated Utes under provisions of 25 U.S.C. §§ 677o(a) and 677l(2). The authorized representative powers are appurtenant to the allotted lands, and the entire mineral estate, in the same sense in which the irrigation charges adjudicated in *Scholder v. United States*, 428 F.2d 1123 (9th Cir. 1970) cert. denied 400 U.S. 942 (1971) were appurtenant to the allotments therein.

IV

The relief prayed by Petitioners was asserted in the trial court, and fairly presented in the Petition for Certiorari. Restoration of the mineral estate should be granted, and will not result in any money judgment against the United States, which agrees that it merely holds the property for the Indians beneficially entitled to it in any event. If the minerals are restored, the Indians should then be awarded judgment against the defendants in the fraud claims in an amount equal to the payments lost during the time that these proceedings have been pending.

PRELIMINARY STATEMENT

Reply to the briefs of the respondents to the fraud claims is generally considered superfluous because they fail to discuss matters germane to the issues under review. Respondent Bank, by placing its sole reliance on *List v. Fashion Park, Inc.*, 340 F.2d 457 (2d Cir. 1964), cert. denied sub. nom

List v. Lerner, 382 U.S. 811 (1965), simply assumes that the case properly frames the elements to be proven herein, and fails to afford this Court any guidance on the question of whether "reliance," or any other element, may be engrafted onto the elements specified by the Exchange Act or Rule 10b-5 adopted thereunder. The observation of the Government at footnote 63 of its brief and accompanying text (Br. 67) adequately expresses Petitioners sentiments in that regard.

Respondents Bank and Gale would have this Court substitute itself in the role of a trier of the facts, though the proposition that the trial judge is the appropriate finder of the facts is so fundamental that it hardly merits statement. The Court of Appeals did not disturb the trial judge's findings, other than those dealing with the question of aiding and abetting and conspiracy (see Brief for Petitioners, pages 22-25), but merely differed with the trial court on whether the facts found were a sufficient "participation" as a matter of law (A. 584). Nevertheless, as the Government's brief makes clear, their view of the facts—even if it had been adopted by the trial judge—fails to take proper account of the provisions of the Rule dealing with "direct or indirect" conduct constituting a "device, scheme, or artifice to defraud" or an "act, practice or course of business" which operates as a fraud (Br. 58-59). What these respondents propose is that the broad language of the Rule be ignored, and that the anti-fraud provisions of the securities laws be restricted to affirmative misstatements by one who is a purchaser or seller for his own account. That is what they have in mind when they say that they did not "participate" in a particular sale or that they "purchased" but a limited number of shares, for the synoptic review of the facts by Respondent Gale clearly demonstrates that either or both of the bank employees were involved in the role of purchaser in their

own right, or as principal,² or as agent in the purchases by others, with respect to at least some of the transactions of every plaintiff, and they were connected with virtually every sales transaction when their functions of notary or signature guarantor are taken into account.

In short, these respondents' notion of the implications of the term "participation" is unduly restrictive, even if these factual questions were a matter under review.

It is understandable that in condensing 74 pages of findings and over 2,000 pages of evidence and testimony into the scope of a factual statement suitable to a brief, counsel will disagree over what generalizations on the facts are appropriate. Therefore, we shall not take umbrage at the accusations of "shabby falsehood" and "deliberate distortion." Invective is not, however, a substitute for legal analysis. We are content for this court to examine the trial judge's findings and the evidence to determine if our statement of the facts is accurate.

Nevertheless, as the Government's brief abundantly illustrates, it is not necessary for the Court to descend into the factual dispute to resolve the legal questions under review. The Government, which surely has no reason to stoop to "shabby falsehood," has adopted virtually every factual statement of Petitioners to which the Bank's invective relates.³

² Richard Murray, who is shown as purchaser of the stock of Melvin Reed and Marguerite Murray Hendricks, was in fact the agent of Gale. A. 522.

³ The statement that the Bank performed the functions of a broker, and located purchasers throughout the United States, which the Bank characterized as "inordinate exaggeration" (Br. for Bank 7), is adopted by the Government at Br. 55,60-62; Petitioners statement relative to the Bank working in collaboration with used car dealers, which the Bank characterized as a "falsehood" (Br. for Bank 8) represents the trial judge's finding at A. 522 and is adopted by the Government at

Of all the respondents to the fraud claims, Haslem alone has supplied this Court with a thoughtful and thorough analysis, though limited to the issue of "reliance." No reply to Respondent Haslem's argument is required, however, for his analysis leads to substantially the result urged by Petitioners: *viz.*, that since "reliance" has been construed to mean substantially the same as "materiality" — an element written into Rule 10b-5 itself — no elements other than those specified in the statute and Rule should be required.

Yet Haslem also pursues the common effort of the fraud defendants to avoid liability by dissecting the case and viewing its separate parts in isolation, as if the fact that Haslem did not devise the forms used could be considered determinative of whether he manipulated a system devised by others. We shall not belabor our view of the trial judge's findings concerning Haslem's market making activities, purchases through agents, conduct in concert with others, etc., which is set out at Brief for Petitioners pages 10-11, 16, 20 and 23, but if the Court could have any doubt that he did these things we suggest a reading of his letter at E. 87-88 where he reduced to writing the broad outline of the scheme subsequent-

Br. 56; the statement that the market was maintained by the Bank officers, which the Bank charged was "absolutely false" (Br. for Bank 8), is adopted by the Government at Br. 55 and 57; and Petitioners statement that the trial judge's findings represent findings of fraud, which the Bank described as "shabby falsehood" (Br. for Bank 10) and "deliberate distortion" (Br. for Bank 11); is repeated numerous times in the Government's argument at Br. 54-66. We are, nevertheless, startled over some of the points counsel question, such as our innocuous observation that the Roosevelt office of the bank is located on the Indian Reservation. Nothing is claimed for the statement other than that the Bank was located close to the Indians, and reference to any map will disclose that Roosevelt is in fact located at the heart of the Reservation's exterior confines. We assume that the Bank intends to say that its office is not located on Indian owned lands, with which we agree, but that hardly renders our statement "false and misleading."

ly determined by the trial judge. The claim that all of Haslem's activities were after August 27, 1964, is also disproven by his letter.

Haslem would also set up a straw man, with his suggestion that the able trial judge confused the joinder procedures with those dealing with class actions. There were no class action proceedings before Judge Christensen, however, and Haslem is mistaken in suggesting otherwise. Judge Ritter dismissed the class action *before* the case was transferred to Judge Christensen, which we consider to be an error which is not before this Court for review. The subsequent proceedings, in which a common core of conduct was determined which created a common liability, serve to illustrate that the class action (which is a procedural rather than a substantive device in any event) could and should have been employed to effect economies of judicial energy.

ARGUMENT

I

MYTHICAL ASSUMPTIONS FORM THE BASIS OF OPPOSITION TO PETITIONERS PRAYER FOR CONFIRMATION OF THEIR MINERAL ASSETS

The arguments in opposition to Petitioner's request that they be confirmed in their ownership of the mineral assets, which is contingent upon recognition of AUC as "authorized representative," are characterized by somewhat fanciful assumptions concerning the facts and law. These matters are of fundamental importance, and for lack of a more descriptive term we refer to them as "myths."

A. *Myth Number One: That BIA Can Alter Congress' Termination Plan.*

A fundamental dilemma posed by the Petition for Certiorari, which this Court undertook to review, is whether BIA

may alter Congress' termination program. The assumption that such a modification is possible is the basis for the claim that UDC is authorized by Section VII of the Plan for Distribution of the Assets of the Individual Mixed-Blood members (Plan) (See Br. 9-10).

The Plan was drawn by six representatives of the terminated Utes and their legal counsel.⁴ It depends for its authority upon the fact that BIA *acquiesced* in its preparation, but it is of doubtful validity for any purpose, because it was not "ratified by a majority of said group" as the Termination Act requires.⁵ In any event, the plan is of inferior importance to the Termination Act itself, and does not even rise to the dignity of a regulation promulgated by the Secretary. To say that it modified the statutory provisions would surely be strange doctrine, particularly when it was drawn by those whose legal status was that of wards.

The Government also employs this myth in an effort to circumvent the plain provision of Section 15 of the Termination Act⁶ requiring the Secretary to supervise all sales of "interests . . . in real property" (emphasis added) until August 27, 1964. That section is one of the important provisions of the Termination Act relied upon by the trial judge, and Native American Rights Fund, *amicus curiae* (NARF), in concluding that the United States had a *statutory* duty.

⁴ See E. 147.

⁵ See section 13, 25 U.S.C. § 677l, App. ix. Resolution No. 56-66, cited at Br. 10 as authority for insertion of reference to a corporate authorized representative in the Plan, was a resolution of the Board of Directors of AUC approved by the vote of five (5) mixed-bloods. The resolution purports to confirm a "unanimous" vote of the "membership," but in fact the resolution was never ratified by a majority of the mixed-blood group, as required by 25 U.S.C. § 677l, and the document cited does not say otherwise, or even by a majority of the *adult* mixed-bloods. (See 25 U.S.C. § 677e.) The Government evidently has no such resolution, for it refers to none.

⁶ 25 U.S.C. § 677n, App. xii-xiii.

No citation should be necessary for the proposition that the mineral estate of the reservation was "real property," and the fact that the UDC stock was intended to represent the terminated Utes' interest in the minerals hardly merits statement. In fact, the "warning" printed on the face of the stock certificates so declares,⁷ and the Government freely admits, in another context, that "the stock . . . represented each mixed-blood's allocated share of tribal property in oil, gas and minerals . . ." (Br. 40-41). In face of these rather obvious facts, the Government nevertheless urges that though "the assets themselves thus remained subject to restrictions . . . stock in the Ute Distribution Corporation did not" (Br. 41-42). In other words, though Congress plainly declared that *interests* in real property were to be "restricted," BIA could convert those interests into *unrestricted* assets by interposing a corporation between the Indian and his property. The argument was rejected by the trial judge as frivolous, and should be so rejected now.

The maxim we have constantly recurred to bears repeating here:

"Congress has the power to determine when, how and by what steps it will emancipate the Indian and whether the emancipation shall be complete or only partial."⁸ (Emphasis added.)

A third application of the mythical power of BIA to overrule Congress is in relation to the authorized representative problem. In response to Petitioners' objection that the formation of UDC, to the extent that it purports to act as

⁷ E. 106.

⁸ *Crain v. First National Bank*, 324 F.2d 532, 535-536 (9th Cir. 1963). *Accord*, *Menominee Tribe v. United States*, 391 U.S. 404 and cases collected there. *See also* *Chippewa Indians v. United States*, 307 U.S. 1 (1939); *Board of Commissioners v. Seber*, 318 U.S. 705 (1943); *United States v. Waller*, 243 U.S. 452, 459-60 (1917); *United States v. Bowling*, 256 U.S. 484 (1921).

"authorized representative," did not comply with the requirements of Section 6 dealing with a public referendum, it is proposed that the provisions of the statute were modified by the bylaws of AUC defining a quorum for the conduct of business at a special meeting. (See Defendant Intervenor Br. 10. The Government evidently lacks confidence in this argument and did not adopt it.) The reasoning is that because AUC was properly formed, and the UDC articles were adopted at a special meeting of the membership of AUC (Defendant Intervenor Br. 10), the requirement of section 6 of the Termination Act⁹ of "a majority vote of the adult mixed-blood members of the tribe at a special election authorized and called by the Secretary" to validate any public referendum dealing with selection of an authorized representative was superseded by the quorum requirements of the AUC Articles. Forty-two terminated Utes would thus be permitted to bind all 490 in a manner not contemplated by Congress. Again, the argument appears frivolous and should be rejected.

B. Myth Number Two: That the "Right of Refusal" Was Created By the UDC Articles.

Myth number two proceeds where myth number one leaves off, and is designed to avoid the trial court's findings of Government liability. It declares that, assuming the BIA has successfully converted the realty into personalty, the "right of refusal" extended by Section 15 to all interests in real property did not apply. Thus, when the stock certificates and UDC Articles recited that the same right of refusal applied to the stock sales, the source of the right was the UDC Articles rather than the statute and could not give rise to liability. It is proposed that, therefore, this Court should simply not inquire into the question of whether the rights of the indi-

⁹ 25 U.S.C. §677e, App. iii.

vidual terminated Utes were protected by the term "members of the tribe" and allow the right of these and all Indians similarly situated to fall by default. The underlying premise of this argument is false, but beyond that, it fails to even discuss important aspects of Petitioners claim that the liability was statutory.

The regulations also apply the "first refusal" option to the stock sales, and obligate the Secretary to supervise the "price and terms" of sales.¹⁰ The regulations further require that all sales be "in accordance with the provisions set forth in the Articles of Incorporation and the certificate of stock." The forms for the sale of stock, which were promulgated by the Secretary, also extended the right of refusal option to the stock sales (see E. 41, 44). The regulations have the force of statute because they were promulgated under authority conferred upon the Secretary by Section 27 of the Termination Act.¹¹

Nevertheless, even if the Secretary's extension of the first refusal option to the stock sales and the promulgation of forms and procedures in that regard was a purely voluntary act, it does not follow that the United States is excused of liability. *Indian Towing Co., Inc. v. United States*, 350 U.S. 61 (1955), and cases following it, hold that the United States may incur liability for its negligent conduct in the role of volunteer if others detrimentally rely. The trial judge concluded that such circumstances were present in this case (e. g. A. 533).

C. *Myth Number Three: Compliance With a Congressional Mandate May Be Excused If the Indians Consent.*

The notion that persons who are declared by Congress to be incompetent, or of limited ability, can waive compliance

¹⁰ 25 C.F.R. 243.8 and 243.12, App. xx.

¹¹ 25 U.S.C. §677z, App. xvii.

by their guardian with a Congressional mandate is advanced by Defendant Intervenors, who urge that "each [terminated Ute] received 10 shares of the common stock of the corporation" (Defendant Intervenors Br. 9) and that therefore "every member accepted the benefits of the stock . . . knowing from the public record that in exchange for their stock they had delegated to UDC authority to manage and distribute the proceeds from the mineral estate" (emphasis added) (Defendant Intervenors Br. 11). The Government does not repeat these arguments, and we assume it does not subscribe to them, but they are nevertheless implicit in the Government's review of resolutions of the "general membership" of AUC (Br. 9-11). We know of no doctrine imparting constructive knowledge of the contents of articles of incorporation, filed at the office of the Secretary of State hundreds of miles away, and Defendant Intervenors refer to none.

Nevertheless, the facts are exactly the opposite, for not a single terminated Ute ever "received" or "accepted" his stock certificate,¹² or ever even had an opportunity to do so, or to "exchange" his mineral rights for them. Indeed, it was Mr. Boyden, counsel for Defendant Intervenors, who delivered the stock certificates to the bank and instructed it that "the stock of the corporation *will not be delivered to each stockholder but will be delivered to you*"¹³ (emphasis added).

We would be less than candid with this Court if we did not observe that Mr. Boyden's role in advancing these arguments is highly objectionable to Petitioners, and purposely destructive of their vital rights. The record clearly shows that he purported to act as counsel for the terminated Utes in the drafting of virtually every instrument forming a basis

¹² The trial judge so concluded at A. 516. See also the testimony at A. 287-288.

¹³ E. 19.

for Mr. Boyden's claim that petitioners have unwittingly abandoned their rights.¹⁴ Yet, Mr. Boyden now urges that every ambiguous provision which he caused to be inserted

¹⁴ See E. 19-20, 147, 150. Mr. Boyden, or members of his law firm, also drafted the UDC Articles, E. 1, the stock certificate, E. 106, and the Constitution and Bylaws of AUC, E. 151, and his retainer agreement is in evidence, at R. 87-90:

"It is specifically understood that the Attorney also represents the Ute Indian Tribe of the Wintah and Ouray Reservation, Utah, composed of the full-blood members of said Tribe and it is mutually agreed that should any controversy arise involving a conflict of interest between the Affiliated Ute Citizens and the Ute Indian Tribe that may not be amicably adjusted between them, *the Attorney will represent neither the Affiliated Ute Citizens nor the Ute Indian Tribe upon the matter in controversy* and in such event the Attorney may take such action in relation to this contract, including termination thereof, as in his opinion may be required by the highest ethics of the legal profession and in good conscience." (Emphasis added).

An account summary of AUC's funds held in trust accounts 14X7178, 14X7678, 14X7179 and 14X7679, introduced by the Government on rehearing at R., reflects a total of \$127,536.18 paid from AUC's funds for "U.S. claims expenses." We are advised that the sum represents amounts paid to Mr. Boyden and other lawyers working in association with him for services in representing AUC.

The "cheap shot" accusation that AUC is "a rump revival of an association that has thus divested itself of all title and authority" (Defendant-Intervenors Br. 12) should also be measured against the foregoing contract, and related events. The contract was approved by BIA in October, 1960—almost two years after the formation of UDC—and contemplated lobbying activities on behalf of AUC in connection with the Act of September 25, 1962, cited at page 36 of the Government's brief. Thus, as late as 1962 neither Mr. Boyden nor BIA questioned that AUC retained its authority as "authorized representative." It is curious that Mr. Boyden would question AUC's standing to bring this suit, in the face of *Preston Allen v. Porter L. Merrell*, 6 Utah 2d 32, 305 P.2d 490 (1956) and *Preston Allen v. Ute Distribution Corporation*, Civil No. 4597, Fourth Judicial District Court, Duchesne County, State of Utah (1966). Preston Allen, it happens, is the President of AUC and he has joined in authorizing this suit. His counsel in both of the foregoing actions, which were filed by Mr. Allen as representative of all terminated Utes because he was their leader, was John S. Boyden. Moreover, the Duchesne County matter, which was concluded more than one year after this action was initiated,

in these documents must be construed *against* his former client's interest. Mr. Boyden, in his capacity as counsel to AUC, was instrumental in preventing the Indians from gaining actual knowledge concerning their stock, by initiating the practices which prevented them from ever seeing their certificates, yet he now advances the argument that his former clients are estopped by circumstances he himself created. The trial judge, we think quite perceptively, recognized why such an appearance by Mr. Boyden was unfair and advised him to that effect.¹⁵ This Court need not concern itself with that aspect of the problem, but we submit that it should weigh Mr. Boyden's hand in these matters against his urging that the non-Indian beneficiaries of these practices, who he now speaks in behalf of,¹⁶ may profit by his conduct.

charged that UDC was squandering the assets of the terminated Utes, and Mr. Boyden sought relief against UDC on behalf of all mixed-bloods. Yet Mr. Boyden would now have this Court believe that the mixed-bloods actually favor UDC, and that those who object to it are acting against the Indian's interest.

Does AUC have authority to act for its members? Mr. Boyden certainly had no doubt when he was employed as its attorney. Is the expense of attorneys fees a burden which justifies the denial of petitions to this, or other, courts? Mr. Boyden did not think so when the fees were paid to him. Is it Mr. Boyden's position that it is better for the terminated Utes to lose their entire mineral interest to oil speculators, such as Mills Tooke of New Orleans (E. 85), than to incur the expense of counsel to recoup their rights?

¹⁵ The trial judge explained, more effectively than we could hope to do, why an intervention such as he has engaged in herein was improper. A. 560-63.

¹⁶ The attorney for Defendant Intervenors argues for the interest of the oil and gas companies who are lessees of the Indian lands (Br. 3, 12) and seeks preservation, *inter alia*, of the interest of the beneficiaries of the fraudulent practices. Perhaps it is a coincidence that many of them are also oil speculators: (See e.g. E. 85). At no point do Defendant Intervenors even hint that the individual Indian's interest should be preserved against these shrewd oil speculators, although that was the express intent of the sponsor of the Act in proposing its limitations on transfer. See 100 CONG. REC. PT. 5, 6252-6253 where Senator Watkins, who was sponsor of the Ute Termination Act, so indicated in relation

Even Peter Minuit was not so brash as to undertake the acquisition of Manhattan Island by depositing stock in the Mahican's name at an Amsterdam bank. It required at least sixty Guilders in fishhooks and glass beads, even in 1626,¹⁷ and he engaged in no pretense that his acts were a protection to the Indians. Even if the Indians were highly skilled investors they could not be estopped to assert their true rights by such a ruse,¹⁸ even if they knowingly acquiesced in the arrangement. The terminated Utes, who never saw the Articles of Incorporation or their stock certificates, plainly did not do so,¹⁹ and considering the complex nature of the problem,

to the companion PIAUTE Termination Act. Defendant Intervenor urges that Petitioners cause should be denied in the interest of "ready transfer, descent or bequeathing of shares," though it is plain that Congress sought to limit the transferability of all assets of the terminated Utes, and prevent transferability of the mineral assets altogether. Defendant Intervenor also poses the spectre of "heirship problems," though they must know that there is nothing peculiar or different about determining Indian heirs and if such problems developed under the Allotment Act it was because of the inaction of BIA. See CAHN, OUR BROTHERS KEEPER 88 (1970). Indeed, the very spectacle of an attorney appearing in support of termination legislation, in face of the universal condemnation of the policy by the academic and Indian communities, taxes credibility. To assume that in doing so he speaks with an Indian voice is more incredible still.

¹⁷ E.g. BROWN, BURY MY HEART AT WOUNDED KNEE 4 (1970).

¹⁸ E.g. *Heakman v. United States*, 224 U.S. 413 (1912) quoted at Brief for Petitioners, page 38.

¹⁹ See, e.g. the testimony of Mrs. Hendricks, at A. 232:

Q. I will show you a stock certificate in Plaintiffs' Exhibit 6-A, with your name on it, for ten shares bearing No. 178. Have you ever seen that before? A. Well, that was the first time I've ever seen one of those things. I never saw one before, don't know that I owned one. That's the first time I've ever seen one.

Q. This is the first time you've ever seen one? A. That's right. I've never saw one before. Never have."

See also, the testimony of Mrs. Case, at A. 307-309:

Q. Did Mr. Gale--You actually went before Mr. Gale?

A. Yes, uh huh.

Q. Did he tell you not to sell your stock?

as revealed in these proceedings, it is not likely that they could ever have done so.

Even if the factual basis for an estoppel were present, the Indians had no power to ratify any action not authorized by Congress in the Termination Act. The restrictive provisions were inserted because Congress believed that the terminated Utes needed supervision, at least on a limited basis. They were in a position roughly analogous to the beneficiary of a spendthrift trust. It would be a work of absurdity to permit such a person to frustrate the trustor's purposes by simply consenting to the attachment of his trust property.

D. Myth Number Four: That the Terminated Utes Should Not Object, Because They Requested Termination.

This Court should approach with caution the frequently repeated assertion of the Government that the terminated Utes requested either termination or the creation of UDC (Br. 33). Even if the terminated Utes had requested termination, which we deny, that would be no reason to construe

A. No, sir.

Q. Did he tell you what "unadjudicated or unliquidated claims against the United States" were? A. No, sir.

Q. Did you know? A. No, sir. What I mean, I didn't know—not absolutely, no. Only there is money in it, or something of that sort.

Q. Did you know what the mineral rights of Ute Distribution Corporation were? A. No.

Q. Did you know anything about oil shale? A. No. I just know that it's black.

Q. Did you ever see either of the first two stock certificates in your folder? A. I seen the first two. I signed one for five shares. They took it up, got it in the bank somewhere. And, of course, I don't read very good or understand what I do read. But anyhow I picked it up and said, "I want to read what I'm signing." Mr. Gale took it out of my hand, turned it over, and said: "You wouldn't understand what you read anyhow. Sign it."

the Termination Act against their interest or refuse them protections Congress inserted in the Act for their benefit. That, after all, is the most we seek in these proceedings.

It is true that some Indians testified to Congress in favor of termination, but in the unusual circumstances of the Indian world we seriously doubt if such testimony, by a carefully selected few, constitutes consent by the entire group. The appalling bureaucracy of the Indian world, which converts those who should be its leaders (*i.e.*, tribal councils and tribal attorneys²⁰) into *opponents* of the Indians interest, is detailed

²⁰ At CAHN, OUR BROTHER'S KEEPER 121-23, 131 (1970) it is explained that tribal attorneys, and other experts, are effectively selected by BIA, rather than the Indians themselves:

"A tribe must have BIA approval to secure the services of a lawyer, an engineer, an architect or other professional help. Not surprisingly, if the Bureau opposes the project it can effectively block it. Thus, when the Papago Tribe in Arizona became impatient with the mediocrity of 'experts' provided by the BIA, they sought to hire their own consultants at their own expense. The BIA threatened the tribe with total withdrawal of all BIA services." *Id.* 122-23.

"Like certain juvenile court judges who feel it is not in the 'best interest of a child' to provide due process, the Bureau of Indian Affairs can become highly offended when lawyers dare to tread into the benign system of care which it administers. The Bureau believes that the interests of its Indians are best served without 'outside meddling' by attorneys." *Id.* 116.

Tribal council members are also converted by BIA into opponents of the Indian's interest:

"In many ways [the country Sioux] look at [the tribe] in the same way that many urban working class look at the police force and city government. They see it as a foreign coercive feature in their daily lives . . ." *Id.* 130.

The Indian Editorial Board, a group of nationally prominent Indians who helped compile OUR BROTHER'S KEEPER, includes Mr. Francis McKinley, a member of the "full-blood" group who Defendant Intervenor claim to represent. *Cf.* *Littel v. Nakai*, 344 F.2d 486 (9th Cir. 1965) *cert. denied* 382 U.S. 986 (1966); *Scholder v. United States*, 428 F.2d 1123 (9th Cir. 1970) *cert. denied* 400 U.S. 942 (1971). (see comments of Judge Hufstедler at 1130). Thus the true spokesmen for the

at CAHN, OUR BROTHERS KEEPER, 128-31 (1970). The vernacular of the day has even coined the term "Apple" to describe these, who are "red on the outside but white on the inside."

The myth that the Indians either requested or consented to termination is exploded at BROPHY & ABERLE, THE INDIAN: AMERICA'S UNFINISHED BUSINESS, 187-91 (1966).²¹ The utter fallacy of these arguments, which are in fact the product of "economic coercion," is explained at Edgerton, *Menominee Termination: Observations On The End Of A Tribe*, 21 HUMAN ORGANIZATION 10 (1962) as to the Menominee and at

Indian's interest are found *outside* the bureaucratic structure administered by BIA, in independent organizations such as Native American Rights Fund and the Association on American Indian Affairs, Inc., *amici curiae*, independent Indian organizations such as the National Congress of American Indians, and local Indian associations not dependent upon BIA approval of their every action, such as AUC.

²¹ Brophy & Aberle is an important text for anyone who would understand the destructiveness of termination to basic Indian values. The following observations are illustrative only:

"If there had been more time for the Indians to understand and consider these termination bills, and had they then been given the opportunity to ament [sic] or reject them without the immediate inducement of cash resulting from a division of tribal funds, the Klamath and Menominee bills at least would probably never have taken the form, in which they were enacted."

• • •

"If termination is so patently unfair to Indians, why—one might well ask—have some tribes accepted it? Many divers factors have pushed tribes into such 'acceptance.' Near the top of the list one must place inducement of the funds to be distributed among individual tribesmen . . .

• • •

"The repeated assertions at hearings on the termination acts that Indians are ready for termination are all belied by the provisions of the acts themselves, which invariably set up the safeguards usually provided for persons needing guardians. In the transitional period practically every tribal action of consequence has required the approval of the secretary. . . ." *op. cit. supra* at 190-91.

Lange, *Economic Development and Self-Determination: The Northern Ute Case*, 20 HUMAN ORGANIZATION 164 (1962) as to the Utes. The universal condemnation of termination by every Indian leader of National prominence²² and every Indian group²³ renders suspect, at the very least, any suggestion that either these particular Indians, or the Indian community in general, favored the termination policy.

However, there is no need for this Court to descend into the morass of debate on that point, for the appropriate task, as perceptively observed by the Association on American Indian Affairs, *amicus curiae*, is to construe the law in such a fashion that it will secure the maximum protection to Indian values. Patently, the argument over whether the Indians approved or disapproved of UDC is specious, at best, for they had no power to accept or ratify a policy which had not been sanctioned by Congress.

E. *Myth Number Five: That This Is a Dispute Between Indians.*

The suggestions of Defendant Intervenor that this dispute lies between two groups of Indians, and that therefore this Court should not follow the usual practice of liberal construction in favor of the Indian, is also based on fanciful assumptions. In fact, the terminated Utes covet no interest which Congress directed be retained in the ownership of the Tribe, and none is at issue in this case. The only interests at issue, or affected by these proceedings, are those which relate to the 27.16186% of the mineral estate which the Termination Act directed be "partitioned" to the terminated Utes.²⁴

²² E.g. DELORIA, JR., CUSTER DIED FOR YOUR SINS, 54-77 (1969).

²³ *Hearings on S. Concurrent Res. 26, before the Sub-Committee on Indian Affairs of the Senate Committee on Interior and Insular Affairs*, 92nd Cong., 1st Sess., July 21, 1971.

²⁴ Sections 1, 10, 25 U.S.C. §§877, 877i, App. i, vi. Section 10

It is proposed, however, that the Tribe's interest results from its undocumented claim that it has purchased 577 shares of the 4,900 which were issued. We have no information as to whether that claim is accurate or not, but even if true it is doubtful if a legitimate interest in this controversy is created. During the period of time in issue, and extending through the time of trial, the Tribe had not purchased a single share of stock!²⁵ Thus, if the Tribe did purchase 577 shares it necessarily did so with full knowledge of the claims of AUC, and of the findings of the trial judge that the terminated Utes were being imposed upon. It surely would be harsh law to say that the interest of one who purchased several hundred shares of stock having such knowledge should be preserved at the expense of the several thousand shares of the terminated Utes who were imposed upon.

Even if the Tribe's 577 shares did relate to the issues of this case, its suggestion that its acquired interest in the mixed-blood's assets must be preserved at the expense of AUC is of dubious merit. If the guardian of the Tribe's funds, the BIA, caused, or even permitted, the Tribe to make such an investment—at a time when the guardian itself was a party defendant to a suit challenging the propriety of these sales—then it seems that the remedy should be against the guardian. At least no reason is suggested why every mistake made under what is a badly misguided law should be visited on the terminated Utes. Surely the United States should not be per-

declares that "after such division the rights or *beneficial interests* of each mixed-blood person . . . shall constitute an undivided interest in and to such property which may be inherited or bequeathed" . . ." (emphasis added) thus negating any claim that the Tribe retained any interest in the terminated Utes share of the assets.

²⁵ The trial judge so concluded at A. 510, 530. See also defendant's exhibit F-A, which is the transfer records of the Bank up to the time of trial, which reveal that the Tribe did not own a single share.

mitted to set up after-the-fact defenses by causing its wards to engage in such transactions.

II THERE IS NEITHER LEGAL NOR FACTUAL BASIS FOR UDC ACTING AS AUTHORIZED REPRESENTATIVE

The Government agrees that there is no square statutory authority for the formation of UDC, but attempts to surmount that conceptual problem by referring to the Plan For the Distribution of Assets of the Individual Mixed Blood Members of the Ute Indian Tribe (E. 134) (Plan), and some ambiguous general language of Section 13(3) which it claims as authority for the insertion of such a provision in the Plan. Scrutiny of the Termination Act will show that the government has overworked the provisions of Section 13(3), however, and that the authorized representative powers were never transferred to UDC in any event.

A. *Section 13(3) of the Termination Act Contains no such Authority.*

The statutory provision cited by the Government as authority for UDC acting as authorized representative reads as follows:

"When, in the opinion of said mixed-blood group, it is to the best interest of said group to transfer a portion of the assets of said group to a corporation or other legal entity for any purpose, the Secretary is authorized to make such transfer."²⁶ (quoted at Br. 35)

It is urged that the foregoing language is sufficient because "the proceeds from the minerals are certainly assets." (De-

²⁶ Section 13(3), 25 U.S.C. §6771(3), App. xi.

fendant Intervenor Br. 17). The implications of that argument are, literally, that the "mixed-blood group" could dispose of *any* assets, to *any* "legal entity," and could do so "for any purpose." Such a pervasive design cannot be ascribed to Congress, for to do so would render superfluous the entire balance of the Termination Act. Congress' carefully contrived system of phased withdrawal of restrictions and protections could be countermanded by the Indians themselves, if the Government's construction is adopted.

The provisions of the statute which are inconsistent with the Government's position, and the policy reasons supporting Petitioner's construction of it, are analyzed in some detail at Brief for Petitioners 41-44. It remains to be observed, however, that this entirely new argument, presented for the first time in this Court, is defective because (1) it ignores the qualifying language of the subsection quoted, which limits its application to "corporations for the grazing of livestock [and] handling of water and water rights," (2) it conflicts with the plain, and more specific, declaration of Section 13(2)²⁷ that the mineral assets are *not* to be partitioned to corporations, (3) the *Secretary* did not hold the authorized representative powers, and therefore could not transfer them, and (4) the provision quoted could not contemplate UDC, for the corporation's powers were limited to the joint *management* of *members'* claims and assets. *Ownership* of assets, which is all the quoted language relates to, is not even among the powers of UDC.²⁸

Section 13(3) is quoted out of context. It properly reads as follows:

"The plan for division of assets among the members of the mixed-blood group may include:

²⁷ 25 U.S.C. §6771(2), App. x.

²⁸ See E. 4.

(3) Organization of corporations for the grazing of livestock, handling of water and water rights, and the shares therein may be issued to the members of said group in proportion to their interests in the assets of such corporations. [Followed by the material quoted *supra*, p. 22.]”

UDC is *not* a corporation for the “grazing of livestock” or “handling of water and water rights,” and therefore Section 13(3) cannot apply to it. Moreover, the portion of the section quoted could not apply in any event, for it simply provides that the “Secretary” shall have authority to “transfer a portion of the assets” to the specified corporations.²⁹ The authority which must be found must be for the establishment of a corporate authorized representative, and must authorize AUC to transfer its powers to the corporation. Section 13(3) bears no relation to either of these problems.

Even if it could be assumed that the authority to “transfer” assets referred to in subsection 13(3) carried, by implication, the authority to transfer the authorized representative powers, the Government’s analysis nevertheless offends the familiar doctrines that statutes must be construed in a manner giving effect to all of their constituent parts, and that internal structure (*i.e.* section headings, subdivisions or classifications) may impart meaning to ambiguous provisions.

Section 13 permits the adoption of “a plan for distribution of the assets of the mixed-blood group *to the individual members thereof.*”³⁰ (Emphasis added.) Neither the authorized representative powers nor the underlying minerals were to be transferred to the individual members, and therefore

²⁹ The Government agrees that the mineral estate has not been transferred by the Secretary, but remains in trust with the United States.

³⁰ Section 13, 25 U.S.C. §677l, App. ix.

the section is a curious place to look for authority bearing on that subject. Moreover, Section 13(2) clearly stipulates that the minerals are *not* to be partitioned to corporations, and Section 6 declares that the authorized representative was to be selected by a constitution and bylaws. If Congress had intended that the authorized representative be selected by articles of incorporation, adopted under state law, it would have said so in Section 6. If it intended that corporations could be delegated the authorized representative powers, it would have also said so in Section 6, or at least it would have used the term "authorized representative" in section 13. If Congress had contemplated that the term "assets" would include the authorized representative powers, it would have provided in section 13(3) that AUC could make the transfer, for the power resided with AUC rather than the Secretary.

We surely cannot assume that Congress set out to trick the terminated Utes, by concealing provisions dealing with the authorized representative in such an improbable place, thus setting up the mechanics by which they would unwittingly surrender rights of infinite value.

It is not enough to say that UDC has the powers of authorized representative because its Articles of Incorporation recite that it does, nor is it of any consequence that 42 of the 490 Indians authorized the filing of the Articles of Incorporation in the general membership meeting.³¹ It must also be

³¹ It is as if one undertook to pre-empt the powers of any other federally chartered institution by filing articles of incorporation reciting that intent and thereafter obtaining ratification by a small minority of the persons beneficially interested in its assets. The Government's analogy to the transfer of shares in a corporation limited by law as to the transfer of its property (Br. 42) is not apt, for here the property is not held by the corporation at all but by the United States in trust for the individual terminated Utes. A purported transfer of the assets held by a trustee in bankruptcy by vote of a minority of creditors would be more appropriate. That could only be done in such a manner as Congress directs.

shown that (1) there was some statutory authority for a corporate authorized representative and (2) there was a legally sufficient transfer to it of the authorized representative powers. The claimed ratification of the corporation, by the vote of 42 persons at a special meeting of AUC, is of no effect because the statute declared that after the formation of AUC the general membership had no power to dispose of property in a public meeting, nor did it permit AUC to modify the requirements of the statute that a public referendum must be "by a majority vote of the adult mixed-blood members of the tribe," which was far in excess of 42 persons.

Defendant Intervenor thus make a mockery of the statute with their claims that this suit "seeks to strip UDC of powers and assets" (Defendant Intervenor Br. 3) and that Petitioners "endeavor to reactivate the Affiliated Ute Citizens." Clearly, UDC could not be stripped of powers which it was never invested with, nor is there any indication that AUC was ever deactivated.³² Such arguments echo similar claims rejected by this Court in *Menominee Tribe v. United States*, 391 U.S. 404 (1968) where it was held that the Menominee's common organization was not deactivated by the termination laws.

As regards each of these contentions, we reiterate, at the expense of repetition, that "however laudable may be the

³² In fact, AUC has continued to function, and the BIA, Congress and the courts have recognized its right to do so. See footnote 14, *supra*. The five officers of AUC who authorized this action are the same five who were officers at the time when UDC was formed, save two directors who are since deceased and have therefore been replaced. Answers to interrogatories in *Affiliated Ute Citizens v. United States*, Docket No. 156-69, United States Court of Claims, establish that AUC has regularly held membership meetings to elect officers, Board of Directors meetings, transacted business bearing upon the "common welfare" of its members, and in many other respects continued to function with respect to the interests of its members.

motives of the Secretary, he, as all others, is bound by the provisions of Congressional legislation,"³³ and he "does not have the power of an Asiatic potentate or even of a benevolent despot" but "like his wards themselves, is subject to legislative restrictions."³⁴

The Indian's wardship relation must be ended in the manner provided by Congress.³⁵ At Br. 34-36, the Government has presented a summary of legislation dealing with the Utes in an effort to suggest that UDC was knowingly sanctioned, after the fact, by Congress. The citation of Mr. Boydens testimony is not convincing, for Congress clearly did not adopt it.³⁶ The Act of September 25, 1962, 76 Stat. 597, 598, cannot be so considered, for it was actually lobbied into existence by AUC. (See footnote 14, *supra*.) Otherwise, the truly significant passages in this history were omitted and when they are added to the Government's account it becomes quite clear that Congress did not sanction UDC in its subsequent enactments. S. REP. 2432, 84th Cong. 2nd Sess. (1956) and H. R. REP. 2744, 84th Cong. 2nd Sess (1956), which contain the legislative history concerning the 1956 amendment to Section 17 (25 U.S.C. §677p) pointedly stipulated that the amendment is "to prevent . . . unjust taxation. The section is amended in *only this one particular*."³⁷ (Emphasis

³³ Ballinger v. Frost, 216 U.S. 240, 249 (1910).


³⁴ United States v. Arenas, 158 F.2d 730, 747-48 (9th Cir. 1947) cert. denied 331 U.S. 842 (1947). See also United States v. Hellard, 322 U.S. 363, 368 (1944); Mullen v. Simmons, 234 U.S. 192 (1914); Starr v. Long Jim, 227 U.S. 613 (1913).

³⁵ F. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 172 (1971) quoting from United States v. Nez Percé County, 267 Fed. 495, 497-98 (D. Idaho 1917).

³⁶ No provisions for the disbanding of AUC were included in the Termination Act; nor is there any evidence that it did disband. The comments of Senator Watkins, on the other hand, suggest that he did not expect the mixed-blood organization to disband.

³⁷ To the same effect, both reports provide "it is intended only

added.) The legislative history concerning each of the other statutes the government refers to reflect that they were understood by Congress as being simply "an act . . . with respect to the Uintah and Ouray Reservation in Utah." It is doubtful if acts long after the corporation was formed could validate it, *nunc pro tunc*, but even if that were so the most recent event in this chain of legislative events negates any such intent. In the *only* action of Congress bearing an *unequivocal* relationship to UDC, Congress adopted legislation in 1970 refunding certain irrigation charges wrongfully assessed to the terminated Utes. At the specific request of AUC, provisions in the earlier drafts of this legislation which would have directed that refunds be paid through UDC were *deleted*, and provision was made for direct payments to the terminated Utes.³⁸



B. UDC Was Not Delegated Powers With Respect To The Mineral Estate.

Even if it is assumed that there was some statutory authority for the formation of a corporate authorized representative, the facts do not support the conclusion that UDC was *delegated* the authorized representative powers. The Government has agreed that the restricted mineral estate was to be managed by the "authorized representative" (Br. 33) and that AUC was in fact the organization formed by the terminated Utes to perform those functions (Br. 9). The Government must also explain, therefore, how the powers were transferred to UDC. We invite careful attention to the mechanics the Government has proposed to divest AUC of its powers.

to preserve the tax exempt status of the distributions from the trust funds held by the United States government . . ."

³⁸ See Section 3 of the Act of September 18, 1970, 84 Stat. 843. Compare Section 3 of S. 1738, 91st Cong. 2d Sess., as introduced by Senator Moss.

The Government refers to the provision of Section 6 declaring that the constitution to be adopted by the terminated Utes "may provide for the selection of authorized representatives," and then springs to the unwarranted conclusion that the powers of Article V Section 1 (b) of the AUC Constitution were duly delegated to UDC and that it thereafter was invested with the "authorized representative" powers. The reasoning is defective because the "authorized representative" powers were contained in Article V Section 1 (a)—they clearly were not contained in Article V Section 1 (b). The two sections appear at E. 155, and may be readily compared. Subsection (a) refers to the power to manage *restricted* assets such as the mineral estate, which is vested in the authorized representative. Subsection (b) refers to the power to manage "assets of mixed-blood members," which are by definition *unrestricted* assets.³⁹

Contrary to the suggestions of the Government, AUC does not contend that UDC was invalidly formed. The issue, rather, is whether it was validly invested with the authorized representative powers. We agree that UDC could manage the assets of the mixed-blood members in much the same way that an insurance company, mutual fund, or bank manages the assets of its members, but conferring authority on a corporation to act as a bank does not automatically invest it with any savings accounts. UDC has *authority*, but must obtain *title* from the individual Indian. The power to manage the *minerals* is an entirely different matter, for they were restricted assets not belonging to any "mixed-blood member" and only the authorized representative has that power.

The Government promotes confusion by failing to keep

³⁹ The Government agrees that the minerals retained their restricted status (Br. 41) and that the individual mixed-bloods property became unrestricted (Br. 8).

the two separate powers segregated. Subsection (a) is the *only* paragraph which employs the term "authorized representative," and surely the AUC would have delegated those powers to UDC if it had intended that UDC become authorized representative. Subsection (b), by contrast, does not employ the term "authorized representative." The latter power was delegated to UDC, but the former was not.

The Government evidently misconceives our position on this pivotal issue, and therefore, at the risk of belaboring the obvious, we shall cast it in syllogistic form:

"UDC was granted only B powers. Authorized representative powers are only A powers. UDC is therefore not an authorized representative."

UDC was given the authority to manage the individual mixed-blood members property (expressed MB). UDC's authority may be expressed thus:

"Authority to manage MB assets only was given to UDC. No MB assets are restricted assets. Therefore, UDC was not given authority to manage restricted assets."

The Government proposes to avoid its dilemma by asking this Court to constructively add the words "authorized representative" to subsection (b), and constructively delete the words limiting the subsection to assets "of the mixed-blood members." This is the same "solution" proposed in SIR WILLIAM S. GILBERT, *IOLANTHE*, ACT II:

QUEEN . . . And yet (*unfolding a scroll*) the law is clear—every fairy must die who marries a mortal!

CHANCELLOR. Allow me, as an old Equity draughtsman, to make a suggestion. The subtleties of the legal mind are equal to the emergency. The

thing is really quite^a simple—the insertion of a single word will do it. Let it stand that every fairy shall die who *don't* marry a mortal, and there you are, out of your difficulty at once!

The second prong of the argument that UDC was delegated the powers of authorized representative is based upon the theory that, whether authorized or not, the individual Indians are estopped to protest because they have accepted the benefits of the stock, with constructive knowledge that it was intended to represent their interest in the minerals. This argument is factually incorrect for reasons set out at pages 12-17, *supra*. Even if factually correct, however, UDC would thereby become vested with no more than the *beneficial* interest, for that is all the individual Indian ever owned. The powers of authorized representative, even in that event, would remain with AUC. Even with respect to the beneficial interest, however, the argument fails because such legal fictions may not be applied to divest an Indian of his property.⁴⁰

III

THE UNITED STATES HAS CONSENTED TO THIS SUIT

Contrary to the Government's suggestions, Petitioners have not abandoned any jurisdictional basis which may be available to them, but have focused on 25 U.S.C. § 345 because it appears peculiarly appropriate.⁴¹ As the brief of Native American Rights Fund, *amicus curiae*, has demonstrated, there are in fact several separate bases for jurisdiction, and this Court needs no citation for the proposition that

⁴⁰ *E.g. Heckman v. United States*, 224 U.S. 413 (1912).

⁴¹ Among other reasons, because it constitutes a waiver of immunity (Br. 29).

if facts supporting jurisdiction are present the federal courts may determine a matter, notwithstanding that the litigant did not cite or rely upon a specific jurisdictional provision.

Petitioners differ, in some minor but nevertheless important respects, with the position of NARF, *amicus curiae*. NARF has perceptively expounded the fundamental reasons why protections prescribed by the Act for the terminated Utes should not be disturbed, noting that it was the terminated Utes whose status was being changed while the full-blood Utes were not, and that therefore the protective provisions of the Act must be construed as being primarily, if not exclusively, for the benefit of the Indians being terminated.⁴² NARF is also correct in urging that petitioners should have been afforded a hearing on the merits of their prayer for a pro-rata share of the minerals, but is incorrect when it echoes the Court of Appeals' suggestion that a beneficial interest would not also be within the purview of 25 U.S.C. §345. A beneficial interest, like a pro rata interest, is undeniably an interest in real property. The proper question is whether the Termination Act set aside individual interests in the previously common holdings of the tribe. Section 10⁴³ is unequivocal:

"after such division the rights or beneficial interest in tribal property of each mixed-blood person . . . shall constitute an undivided interest in and to such property which may be inherited or bequeathed. . ."

A proper analysis, therefore, must focus on the *changes* wrought by the Termination Act. The change that is import-

⁴² NARF's position is supported by the history of the termination policy. See the ANN. REP. COMM., BIA., 1950 at page 342 where Congresswoman Reva Beck Bosone of Utah announced the initiation of studies leading up to termination, and stressed the need for protections against exploitation of the property of the Indians to be terminated.

⁴³ 25 U.S.C. §6771, App. vi.

ant to 25 U.S.C. § 345 jurisdiction is that individual property rights were substituted for joint or communal property rights, as to "beneficial" title as well as legal ownership. That distinction is important in determining if the Termination Act vested the individual Indians with an interest in "any parcel of land to which they claim to be lawfully entitled," and not whether the interest be legal or beneficial.

The statement that 25 U.S.C. §345 "authorized only actions regarding allotments of land" (Br. 29) has been employed as a byword in these proceedings. Because the term "allotment" itself is of imprecise meaning and relates to a wide assortment of grants to Indians,⁴⁴ and because the statute is plainly not limited to just allotments, speaking in those terms obscures rather than aids reasoning. Nevertheless, it may be that some logic is emerging from the debate which may be of assistance to the Court, for the Government has at last undertaken to give definition to the term at Br. 30:

"it means a tract of land set aside out of a common holding . . ."

The mineral lands in question were quite definitely "set aside out of a common holding" in the sense that each individual terminated Ute was given an "undivided interest in and to such property which may be inherited or bequeathed."

The Government concedes that 25 U.S.C. §345 is available to determine rights "appurtenant" to a conventional allotment (Br. 31), and the case for jurisdiction on that basis is even stronger. As we observed at page 40 of Brief for Petitioners, Congress even applied the term "allotment" to the interests of the terminated Utes. Moreover, the minerals in question lie under an assortment of lands, some of which

⁴⁴ See *United States v. Jackson*, 280 U.S. 183, 196 (1930); *Toss Weaxta*, 47 I.D. 574, 577 (1920).

were allotments of the conventional sort, title to which was confirmed under Sections 16 (b) and 13 (2).⁴⁵ Thus, the Government is simply mistaken when it asserts that "the oil, gas and minerals are . . . not under any land allotted to petitioners." The Government evidently would not challenge AUC's right to bring suit with respect to these allotted lands, the mineral interest being clearly appurtenant to them, and we submit that it should also be permitted to do so with respect to the entire mineral estate, for it is appurtenant in the same sense.

The rights of AUC as "authorized representative" are also "appurtenant" rights which may be adjusted under 25 U.S.C. §345, as it has been construed by the courts. The Government has taken exception to our reading of *Scholder v. United States*, 428 F.2d 1123 (9th Cir. 1970) *cert. denied* 400 U.S. 942 (1971) in this regard, but we submit that a careful examination of its holding will bear us out. *Scholder* denied jurisdiction to control the management of an Indian irrigation company, but held that jurisdiction was available to prevent the taxing of the irrigation charges against an allotment on the theory that such an action was appurtenant to the allotment itself. It was the latter proposition which we cited the case for. In finding jurisdiction in the latter instance, but denying it in the former, Judge Hufstedler held that 25 U.S.C. §345 could be employed to adjust all rights appurtenant to an allotment or any practices which tend to jeopardize the Indian's interest. The practice of BIA disregarding AUC's rights as authorized representative is analogous to the practice of BIA in taxing improper irrigation charges to the Indian's land, which Judge Hufstedler held

⁴⁵25 U.S.C. §§677o(a) and 677l(2), App. xiii and x. The minerals also are found under lands retained in tribal ownership under Section 10, 25 U.S.C. §677i, App. vi, and lands sold pursuant to Section 9, 25 U.S.C. §677h, App. v.

within the scope of 25 U.S.C. §345. Both practices affect the Indian's interest.

The relief sought by Petitioners is not inconsistent with the line of cases cited by the Government for the proposition that the United States may not be sued with respect to lands which it holds in trust for Indians, for each of those cases deals with a quite different set of facts. The cases either do not deal with 25 U.S.C. §345,⁴⁶ do not deal with Indian property,⁴⁷ or do not deal with situations in which the individual Indian has been granted specific interests in the trust lands.⁴⁸ *Minnesota v. United States*, 305 U.S. 382 (1939) does raise some interesting points which are germane to the matter at bar, but the holding falls short of the Government's claim for it. There the state attempted to acquire jurisdiction over trust lands under a statute which granted it jurisdiction over the Indian beneficiary. In that sense, the case is distinguishable because 25 U.S.C. §345 grants jurisdiction over the United States, and not just the Indian beneficiary. The *Minnesota* case held, further, that the United States was an indispensable party, in its capacity as trustee, because the restraints on alienation had not been lifted. But, *quere*; what if the restraints on alienation had been lifted, as in Section 10 of the Termination Act?

To the extent that it is applicable at all, *Minnesota v. United States* seems to hold against the position of the Government. This Court held that:

⁴⁶ *Motah v. United States*, 402 F.2d 1 (10th Cir. 1968).

⁴⁷ *Seiden v. Larson*, 188 F.2d 661 (D.C. Cir. 1957) *cert. denied* 341 U.S. 950 (1957).

⁴⁸ *Oregon v. Hitchcock*, 202 U.S. 60 (1906); *Naganab v. Hitchcock*, 202 U.S. 473 (1906) (suit by Indians to control the management of trust lands by the Secretary).

"The fee of the United States is not a dry legal title divorced from substantial powers and responsibilities with relation to the land." (*Id.* 386, n. 1).

Thus, the case seems to reject the contention of the Government that it had no duty with respect to the mineral estate, and supports the conclusion of the trial judge and the Association on American Indian Affairs, Inc., *amicus curiae*, that so long as the United States held the lands it was also bound by a limited duty of care with respect to its management of the estate.

IV

THE RELIEF PRAYED IS APPROPRIATE

The Government has suggested that the prayer of the complaint in the AUC case is somehow inconsistent with either the jurisdictional statute or the Termination Act. The prayer, in pertinent part, is as follows:

"WHEREFORE, plaintiff prays judgment for an order of this Court distributing 27.1686 [sic] percent of the mineral estate underlying the Uintah and Ouray Reservation, Utah, to the individual 'mixed-blood' members of the plaintiff, pro rata, and determining that plaintiff association is entitled to manage said property . . ."

That prayer, by any construction, seeks only the beneficial interest the statute directed be made available to the terminates Utes, for it plainly acknowledges that management rights are divorced from the individual Indian's share. Neither could it be said that the prayer for a "pro rata" interest is inconsistent with the language of Section 10:⁴⁹

"After such division the rights or beneficial interests in tribal property of each mixed-blood . . . shall con-

⁴⁹25 U.S.C. §677i, App. vi.

stitute an undivided interest in and to such property which may be inherited or bequeathed . . ."

Nor is the suggestion that the terminated Utes should be confirmed in their mineral estate and receive the amount of lost dividends, an effort to "have it both ways," (Br. 48) for it must be remembered that we are dealing with wasting assets. The corporation would not be rendered useless, for it has never been the contention of AUC, and it is not now, that UDC was a complete nullity and without legal existence for any purpose. We concede, as the foregoing discussion illustrates, that UDC was validly formed to exercise the powers specified in Article V, Section 1(b) of the AUC Constitution. It may "handle the assets of the mixed-blood," including the mineral proceeds of any individual Indian who sees fit to grant UDC the right to do so. The authorized representative powers, however, may not be exercised by UDC.

In the unlikely event that some of the mixed-bloods who have retained their stock actually are in favor of continuing UDC, nothing will prevent them from doing so. Indeed, the best way to prove or disprove the contention that some or any of the mixed-bloods desire to continue UDC as their agent would be to give them an individual choice in the matter, which the statute declares that they should have. We are confident that none of them will exercise that option, however, for to do so would simply subject their interest to the unconscionable administrative expenses that the mixed-bloods have objected to for so many years.⁵⁰

⁵⁰See footnote 14, *supra*. The account summary referred to in footnote 14 reflects \$311,776.00, deducted from the terminated Utes funds for "administrative expenses." It is curious that the tribal attorney would suggest that this suit will jeopardize the mixed-blood interest, subject that interest to contingent attorneys fees (which is impossible, in the case of trust property), or that any mixed-bloods actually favor UDC, in view of the fact that the mixed-bloods have actually pressed legal proceedings in Utah seeking to prevent the

We urge—we beseech—this Court to recognize the practical realities of Petitioners' prayer. When all of these problems are concluded, it remains a fact that the terminated Utes seek *nothing* from the United States, save recognition of the rights which Congress declared were to be theirs. The United States lays no claim to those rights in any event, and agrees that they are held in trust for those entitled to the beneficial interest. There is, to be sure, a parallel claim bottomed on negligence, but even that might have been avoided had BIA heeded the supplications of its former wards.⁵¹ Thus, this case remains one in which no substantial impact on the national treasury is in prospect.

The argument that Petitioners have changed their basic prayer for relief, or that the appropriate form of relief was not within the issues presented in the Petition, also does not bear analysis. It is true, as we acknowledged in the Brief for Petitioners, that the remedy of recovery of the mineral estate was not contemplated at the time the *Reynos* case was filed or when it was tried, but the AUC case was filed in a candid effort to supply that alternative remedy, at a time well in advance of entry of judgment in *Reynos*. The remedy we now seek was clearly available to and considered by the trial judge (See A. 559-560, 571-572). The two cases were consolidated for hearing in the Court of Appeals, and it was

officers of UDC from squandering the Indian funds. These are curious arguments, also, because they come from the mouth of an attorney whose contingent attorneys fees on Indian litigation are now legend in the West. Nevertheless, as we pointed out in the Brief for Petitioners at page 55, the remedy is to devise relief which will not result in the taxation of counsel fees against the interest of the Affiliated Utes. We agree that such a result would be unfair and that such expenses should properly be charged against those who have required these proceedings to be initiated.

⁵¹ The United States was not joined as a defendant for over a year after the filing of the complaint against the Bank (A. 1). In the

frankly declared during oral arguments that the AUC case was, in a sense, a supplemental remedy to *Reynos*. The two cases have been prosecuted in that fashion from the very inception of the AUC proceedings.

Reference to the Petition for Certiorari will disclose that while the question of damages was not specifically framed as an issue under review, the bulk of the discussion in the Petition relates to the matter of remedy. Rule 40-1(d)(1) of this Court, moreover, clearly states that the matters under review include all subsidiary questions, as the question of remedy must be considered subsidiary to the question of right to relief. This Court has repeatedly held that rules of practice and procedure are designed to promote the ends of justice, rather than defeat them, and that any legal theory of recovery fairly within the facts presented to the lower courts may be invoked by this Court.⁵²

Protests of the Bank and its officers notwithstanding, the appraisal of the individual terminated Utes share of the mineral estate at in excess of \$28,000 per share was not based

meantime, Petitioners had requested that the Regional Solicitor of the Department of Interior assist them, by supplying the records necessary to prosecute their action against the Bank and furnishing any additional help which appeared appropriate. These matters are documented by Plaintiffs Exhibit 53A, E. 47. Mrs. Logan reviewed the practices of BIA which the trial judge subsequently concluded amounted to negligence and concluded that "perhaps there is an obligation to become involved," but her recommendation was evidently countermanded by her superiors. When the United States refused to even make the documents available, it was joined as a party defendant. Had Mrs. Logan's recommendation been heeded, The United States would not now be confronted with the negligence claim, for Petitioners were initially satisfied to recoup their out of pocket losses against the Bank and its officers.

⁵² *Silber v. United States*, 370 U.S. 717, 718 (1962); *United States v. Bess*, 357 U.S. 51 (1958); *Hormel v. Helvering*, 312 U.S. 552 (1941). See also Rule 40-1(d)(2), Rules of the United States Supreme Court.

upon an unrealized speculation.⁵³ To the contrary, the evidence on that point was uncontroverted, based on actual sales transactions, and was corroborated by the Government's own witnesses.⁵⁴ Contrary to the urging that "there were *no* oil leases on the reservation or on the Indian lands" (Haslem Br. 32) (emphasis in original), the Government was receiving a large fortune in oil royalties for the benefit of the Indians at the time of trial (see E. 50-51), and is receiving an even larger amount today.⁵⁵ The trial judge acknowledged the mineral values in finding number 9 at A. 530, but also said that he believed the "problem is not merely to determine what an undivided mineral interest ultimately might be worth" and that therefore he could not "accept the claims of the plaintiffs that the stock should be evaluated at in excess of \$28,000 per share *for the purposes of this action*." (Emphasis added.) Thus, the trial judge did not deny either the presence or value of the minerals.

Nevertheless, this Court need not get into that debate, provided the terminated Utes are restored to their mineral rights.⁵⁶ In that event, however, it would be an unrealistic rule of damages which would not require the fraudulent parties to compensate the terminated Utes in the amount of the lost revenues during the period this litigation has been in progress. The Government itself recognizes that the damages

⁵³ See Brief for Petitioners, footnote 165 at page 51. See also testimony of Dr. Christiansen at A. 386-394.

⁵⁴ See testimony of Paul Biggs, A. 426-28.

⁵⁵ It is a matter of public knowledge that oil production in the Uintah Basin subsequent to the time of trial has increased to an extent that the area of the reservation is now one of the promising oil regions in the entire country. Indeed, if Dr. Christiansen were making his appraisal today, it is certain that he would arrive at a figure in excess of \$28,000 per share.

⁵⁶ If the mineral rights are *not* restored, Petitioners still contend that their loss should include the market value of the minerals.

should be "at least equal to the plaintiffs loss—that is, the difference between the price he received and the price he would have received had there been no fraudulent conduct." (Br. 58; footnote 57.) The Government may differ with us on what the proper amount is (Br. 49), but this Court need not pause over that matter, for the issue can be quickly resolved on remand.

CONCLUSION

Jurisdiction of Petitioners claims against the Government is clearly available. The rights of AUC as authorized representative should be confirmed, and the individual terminated Utes should be granted damages equal to the amount of distributions they have been deprived of by reason of the wrongful payment of their funds to UDC, together with their counsel fees and the costs of maintaining this action.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 1331

**AFFILIATED UTE CITIZENS OF THE
STATE OF UTAH, et al,**

Petitioners,

vs.

UNITED STATES, et al,

Respondents.

**ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE TENTH CIRCUIT**

**REPLY OF RESPONDENTS, FIRST SECURITY BANK OF
UTAH, N.A., JOHN B. GALE AND VERL HASLEM
TO THE AMICUS CURIAE BRIEF OF THE
SECURITIES AND EXCHANGE COMMISSION**

ARGUMENT

The Government's brief, commencing at page 51, includes a segment written by the Securities and Exchange Commission seeking to impose liability on the Bank in order to lengthen the tentacles of 10b-5 and simplify the Securities and Exchange Commission's task of prosecution under that regulation. Primarily, it appears

the Securities and Exchange Commission wants this Court to eliminate proof of reliance as an element in all 10b-5 cases, public or private.

Securities and Exchange Commission counsel commences with the statement:

"With respect to the Rule 10b-5 claims against these defendants, the parties are in apparent disagreement about the underlying facts and the accuracy of the findings of fact by the district court. The Commission's concern, however, is with Rule 10b-5. This portion of the brief therefore deals solely with the proper interpretation and application of that provision in light of the findings stated in the opinion of the court of appeals or in the opinion of the district court if not contradicted or rejected by the court of appeals. We make no attempt to resolve the controversy regarding the underlying facts."

In that sentence Securities and Exchange counsel unequivocally expresses his acceptance of the findings of the court of appeals and asserts that he intends to be bound by them. Then unaccountably, he proceeds to disagree with the findings of the court of appeals for the remainder of his brief. Parroting the palaver of petitioners' brief rather than consulting the record, Securities and Exchange counsel alleges first that the respondents Gale and Haslem employed a device or scheme to defraud in violation of 10b-5. However, the court of appeals found:

"The record does not support the trial court's finding of a conspiracy, plan or scheme to violate any duties owed to the plaintiffs by any of the defendants. The trial court was in error in so finding." *Reynos v. United States, et al*, 431 F.2d 337 (10th Cir. 1970).

Securities and Exchange counsel says:

"We make no attempt to resolve the controversy regarding the underlying facts."

and then attempts to controvert the findings of the appellate court and adopts the alleged facts proclaimed by the petitioners.

In a complete disavowal of the findings of the court of appeals, which he pretends to respect, Securities and Exchange counsel characterizes the respondents' relationship with the individual petitioners as being of such a fiduciary nature as to impose liability on the Bank. The appellate court found otherwise, and its decision is well supported by the law.

The sole and only source of the duties which the Bank had with respect to the petitioners, if any, must be the contract between the Bank and the Ute Distribution Corporation (A. 13). That contract is the one by which the Bank undertook the responsibility of being the transfer agent, depository and bookkeeper to the Ute Distribution Corporation. The contract did not provide for the Bank to assume any responsibility whatsoever with respect to the individual stockholder of Ute Distribution Corporation except to process the transfer of his shares of stock as the transfer agent of the corporation.

The issue raised is simple but vital and far-reaching and the trial court's unwarranted conclusions and decision would have shaken the very foundations of contract, corporate, bank and trust law. The basic question is: When a party enters into a contract with a corporation—not with its stockholders—to what extent does it assume duties for the welfare and protection of the individ-

ual stockholder when the contract itself does not specify any such duties?

There is not a single word in the entire contract which obligates the Bank or its agents to perform the services for the individual stockholder which the trial court attempted by its conclusions of law to impose on the Bank. The trial court attempted to rewrite the contract.

The law to the effect that when a party enters into a contract with a corporation it does not enter into a contract with the corporation's stockholders is so elementary it is difficult to find cases implementing it.

"The contract of a corporation is the contract of the legal entity, and not of the stockholders individually. 'Whenever a corporation makes a contract, it is the contract of the legal entity; of the artificial being created by the charter; and not the contract of the individual members.'" 1 Fletcher Cyclopaedia Corporations §29, p. 126. *The Bank of Augusta v. Earl*, 10 L.Ed.274; *Benjamin Franklin Realty & Holding Co.*, 43 F.2d 337; *In re Luckenbach's Estate*, 261 N.Y.S.2d 106; *Grosslight v. Butts*, 141 N.W.2d 657; and *North Gate Corp. v. National Food Stores, Inc.*, 140 N.W.2d 744.

The law is well established that there is no fiduciary relationship between a corporation and its stockholders, so certainly there would be no fiduciary relationship between a contractee of a corporation and the stockholders of that corporation.

"There is no fiduciary relation between shareholder and corporation, such as is found in all express trusts. Shareholder and corporation are at liberty to contract with each other without restriction, and neither owes the other any extra-

ordinary degree of good faith." Bogert, *Trusts & Trustees*, 2d Ed., §16, p. 90. (Emphasis supplied).

Therefore, there is no fiduciary relationship between the Ute Distribution Corporation and its shareholders, the petitioners in this action. The Bank, contracting with the Ute Distribution Corporation to be its transfer agent, depository and business advisor, was at most an agent or independent contractor of the corporation performing corporate functions for the Ute Distribution Corporation. Certainly if the corporation itself has no fiduciary relationship with the mixed bloods and did not owe them any "extraordinary degree of good faith," then the Bank did not have any type or degree of fiduciary relationship with them and owed no special, peculiar duty of good faith.

The fact that the Bank was a transfer agent, depository and bookkeeper, or even a "business advisor" in the language of the petitioners, did not thrust on Gale or Haslem or any of the Bank's trust department or any other officer, agent or employee of the Bank any type or degree of fiduciary relationship with the stockholders. The Bank was not even in a fiduciary relationship with the Ute Distribution Corporation. It was simply a contracting party, which gave rise to no type of trust relationship.

"While one does not enter into a contract with another unless he trusts and has confidence in him, contract and debt amount to a business and not to a fiduciary relationship. . . . There is no rule that parties to a contract may not freely act for their own interests during the execution of the contract." Bogert, *Trusts & Trustees*, 2d Ed., §17, pp. 107-8.

Obviously, if the December 31, 1958 contract did not render the Bank a fiduciary of the corporation, it was not made a fiduciary of its stockholders. In Paragraph 15 of the trial court's Conclusions of Law (A. 536) the court states:

"15. The Bank occupied toward the mixed blood Indians not coming within the express provisions of the trust if not the position of a fiduciary in the strict sense at least a duty to deal with and for the mixed-bloods in good faith and lawfully and without purpose of overreaching or imposition."

In that paragraph, the trial court tried to establish some kind of fuzzy, incomprehensible, semi-fiduciary, quasi-guardian, nearly-but-not-quite-trustee relationship. The court's concept created a gray legal landscape where it is impossible to make out legal responsibilities. The court projected a new body of law—the law of the "semi-fiduciary." In this case it would impose responsibilities on a corporate-contractee for the benefit of the corporate stockholders where there was no trust or fiduciary relationship contemplated by the contract and the stockholder gave no consideration whatsoever in exchange for the onerous and detailed duties imposed on the contractee in the stockholders' behalf. The nearly-but-not-quite-trustee theory could introduce nothing but confusion into the law. A party is either a fiduciary or he isn't. One is a trustee or one is not, and to impose fiduciary-trustee status on a bank under this set of circumstances forces a bank to forego even being a simple transfer agent for such an organization. If a transfer agent and business advisor to a corporation must investigate the adequacy of the compensation paid to a stockholder

for each share of stock he sells, it can't be expected to do it for a fifty cent notary or one dollar certificate transfer fee. It must hire a squad of trained investigators to analyze the market, interview each selling stockholder and stock buyer, examine the seller's social worker's file and available I.Q. tests, make an appraisal of the corporation's pie-in-the-sky assets and if the consideration paid for the stock is something other than cash, make such appraisal as is necessary to determine its actual value. Such is the ridiculous and impractical responsibility the trial court would impose on the Bank in this case.

As a matter of fact, it appears that the Bank was the only organization involved which really tried to assist and protect the Indians. That is evidenced by the fact that it was the letter of Mr. Cowan, Trust Officer of the Bank, which upon approval by the Government and the Ute Distribution Corporation, set up the procedure which was designed to protect the sellers (Ex. FD, A. 131). Then it was agreed that it was the responsibility of the Government, not the Bank, to check, investigate and "verify the regularity" of the affidavits signed by the mixed bloods.

In the minutes of the board of directors of Ute Distribution Corporation of November 14, 1963 (Ex. 58, A. 70), this sentence appears:

"It is the responsibility of the Superintendent to be sure the affidavit is true."

When Mrs. Sixkiller was asked about that, she testified as follows:

"Q. One other sentence, the last sentence of that paragraph: 'It is the responsibility of the

superintendent to be sure the affidavit is true. Who is meant by the superintendent?

A. The Superintendent of the Uintah and Ouray agency.

Q. Do you remember the discussion that surrounded that, and why that sentence was put in the minutes?

A. Yes.

Q. Would you tell us, please?

A. We had notice—just like above here—and then taking cars and stating that they had received cash.

Q. Do you recall who said it was the responsibility of the superintendent to be sure the affidavit was true? Was that the consensus of the opinion of the board of directors?

A. Mr. Morris, our attorney.

Q. What?

A. Our attorney and the board's opinion." (A. 339).

The Ute Distribution Corporation wrote a letter to Superintendent Zollar asking him to initiate an investigation into the matter of Ute Distribution stock sales, but the Ute Distribution Corporation received no answer or response to the request (A. 335).

In its relationship with the Bank, the Government took the responsibility of investigating the truthfulness and regularity of the affidavits. After presumably doing so, when it sent in the stock powers to the Bank authorizing the Bank to make the stock transfers, its letters always contained the following words:

"An affidavit of each of the above named sellers is on file in this office to the effect that the sum asked for the shares offered and posted has been received."

The court's findings of fact with respect to each of the petitioners verifies this fact, together with the fact that the Bank did not transfer a single share until it had received that certification from the Superintendent to the effect that the required procedure had been complied with (A. 295, 475, 479, 480, 482, 483, 485, 488, 490, 491, 492, 493, 495, 496,, 497, 517, 518).

After the Bank received the certification from the Superintendent informing the Bank that the stock had been offered "in accordance with the law and regulations of the Secretary . . . and there had been no acceptance of said offer," along with the letter that the affidavit to the effect that the Indian had received the sum for which the shares were offered and posted was on file, the Bank, as transfer agent, was legally bound to transfer the stock. If the Bank had refused to do so it would have been subject to suit by and liability to either the seller or buyer of the stock.

Francis T. Christy in his extensive work, *Transfer of Stock*, 3rd Ed. (1960), states in Chapter 5, Sec. 36:

"A stockholder has an inherent right to transfer his stock just as he has an inherent right to transfer any other property he may own. One of the incidents of the ownership of property is the power to dispose of it at pleasure. Hence, 'the courts have jealously guarded facilities for the transfer of title, and all unreasonable attempts to restrain the right to pass title have been declared void as against public policy.' 'Stock in a corporation held by an individual is his own private prop-

erty, which he may sell or dispose of as he sees proper, and over which neither the corporation nor its officers have any control. It is the subject of daily commerce and is bought and sold in the market like any other marketable commodity,

The court of appeals was correct in its finding that the Bank did not violate any duty owed to the petitioners.

We do not argue with the holding of this Court in *Securities and Exchange Commission v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, nor with the case of *Chasins v. Smith, Barney & Co.*, 438 F.2d 1167 (2nd Cir.). They are not applicable in the case at bar because they involve fiduciary situations, and such fiduciary situations do not exist in the case at bar.

The court of appeals did find a possibility of liability on the part of the respondents Gale and Haslem, and consequently the Bank with respect to the situation where Gale or Haslem:

- (1) Purchased stock from a petitioner; and
- (2) Resold promptly at a profit; and
- (3) Failed to disclose to the seller that he could sell at a higher price than they were paying or they made a misrepresentation by claiming that their offer was the prevailing price.

But, said the court of appeals, before that fact situation imposes liability, one additional fact must be proved: That the petitioner seller *relied* on the nondisclosure or misrepresentation. The court of appeals found there was no evidence of such reliance.

On that issue of reliance, the Securities and Exchange Commission may legitimately debate with the court of appeals. If the Securities and Exchange Commission desires to repeal the law of proximate cause, eliminate any necessity of proof of reliance and simply assume reliance when a misstatement is made, the writer will grant the Securities and Exchange Commission has some encouragement in the case of *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 483, which the Securities and Exchange Commission cites in its brief. It is arguable that the *Mills* case might be applicable to the fact situation surrounding one of the twelve petitioners in this case, to-wit: Petitioner, Glen Reed. He is the only petitioner with respect to whom the record reveals:

(1) A respondent (Gale) purchased stock from him (5 shares at \$350 a share) ;

(2) Respondent sold same at a profit (\$530 a share) ;

(3) Respondent failed to disclose to Reed that he, Gale, could resell at a profit, or it may also be inferred that he misrepresented the market by allegedly informing Reed that he was paying the prevailing price.

With respect to the other eleven petitioners, only two of them sold stock to Gale or Haslem, and there was no evidence that Gale or Haslem made a profit on their stock, that they failed to disclose an intended resale or that the prevailing price was any higher than the price they paid.

Now, if the nondisclosure or misrepresentation in the Reed instance was material, then under the Securities and Exchange Commission and petitioners' theory,

allegedly supported to some degree by the *Mills* case, reliance would be assumed, and Gale would be liable to Reed for the amount of his profit on the five shares, to-wit: \$900.

But even the *Mills* case does not definitely decide the Reed case. There are non-analogous factors that keep the shoe from fitting. Those factors are twofold:

(1) In the *Mills* case which involved a misrepresentation to multiple stockholders with respect to the virtues of a merger, there is no affirmative evidence that the many victimized stockholders did *not* rely on the misrepresentation. In the case at bar, there is affirmative evidence that Reed did *not* rely; that is, there is affirmative evidence that Gale's nondisclosure or misrepresentation was not the proximate cause of the sale by Reed and it appears that Reed would have sold to Gale even if Gale had revealed to him that he was going to sell it to someone else at a higher price, to-wit: Reed testified he was "happy to get the money" (A. 172) and even though he thought the shares were worth \$500 apiece, he readily sold at \$350 (A. 173).

(2) In the few cases where reliance has been considered unnecessary, multitudinous plaintiffs were involved (usually a stockholders derivative action or an omission of a material fact, or both.) As in *Mills, supra*, 396 U.S. at 382, n. 5, in those cases where large numbers of plaintiffs are involved or a material omission is the culprit complained of, a showing of reliance would be impossible. As a result, in order to provide members of a class with meaningful relief, the courts have permitted the concept of reliance to merge into the concept of materiality.

The *Mills* case is typical of those cases in which a class of persons seeks relief in the form of declaratory judgment or injunction. However, in cases such as the one now before the court, where plaintiff seeks relief in the form of damages and he is the one who claims to have been injured by the alleged violation of the rule by the defendant, he then should be obligated to show reliance and causation in order to recover, because a mere showing of the violation of the rule would be meaningless without a causal connection.

In those cases where proof of reliance is within the reach of plaintiffs, the courts have continued to apply that requirement. In *Mitchell v. Texas Gulf Sulphur*, F.2d, CCH Fed. Sec. L. Rep. ¶93,019 (10th Cir., April 26, 1970), three plaintiffs sued Texas Gulf Sulphur for violation of Rule 10b-5 based upon a misleading press release. The trial court granted judgments in favor of all three, but the court of appeals reversed as to one of the plaintiffs who sold five days after a correcting press release was issued, ruling that he had no right to rely on the first release when the corrective release had been issued.

And in a related case arising out of the same factual situation, the Second Circuit stated (*SEC v. Texas Gulf Sulphur*, 401 F.2d 833 at 860 (2d Cir., 1968)) :

"Therefore it seems clear from the legislative purpose Congress expressed in the Act, and the legislative history of Section 10(b) that Congress when it used the phrase 'in connection with the purchase or sale of any security' intended only that the device employed, whatever it might be, be of a sort that would cause reasonable investors to rely thereon, and, in connection therewith, so

relying, cause them to purchase or sell a corporation's securities . . ." (Emphasis supplied).

In those cases where money damages are not sought and proof of reliance is so difficult as to be virtually impossible, the courts are justified in examining materiality of the facts involved and in considering a merger of the materiality and the causation. However, in those cases where plaintiffs seek damages, reliance should continue to be an element of proof, *particularly in cases such as the one before the Court, where the plaintiffs themselves testified, and it would be patently simple for them by their testimony to reveal whether they had or had not relied on representations made by the defendants or would have acted otherwise had they not been subjected to a nondisclosure.*

That appears to the writer to be the most significant distinction between the case at bar and cases such as the *Mills* case. In the class action cases involving hundreds of plaintiffs, it is impracticable for them to testify with respect to causation and reliance. Consequently, it is impossible to ascertain factually whether or not they did actually rely. Petitioners in this case suffered no such disability. *They did testify, but none of them claimed that they had relied on any representations made by the respondents, and none of them stated that they would not have sold the stock had they been informed that the buyers (the respondents) could sell the shares at a higher price. All their lawyers had to do was ask them and they would have testified one way or the other.* The language of the court of appeals itself answers the argument of the petitioners on this point:

"The plaintiffs allege that certain acts and statements of the defendants were directed to them or were the proximate cause of their damages. Thus the causal connection must be established—that in fact the loss resulted from defendants' acts—a simple and fundamental proposition in such actions for private damages. The plaintiffs' argument refers to several cases where the proceedings were brought by the SEC for enforcement. The matter of reliance was not there considered, but these are from an entirely different position." *Reynos v. United States, et al*, 431 F.2d 1337 (10th Cir., 1970).

The court of appeals was clearly justified in requiring evidence of reliance in this case and in finding no such evidence in the record.

CONCLUSION

**Respondents First Security Bank of Utah, N.A.,
Gale and Haslem respectfully urge the Court to sustain
the verdict of the Circuit Court of Appeals with respect
to those three respondents.**

Respectfully submitted,

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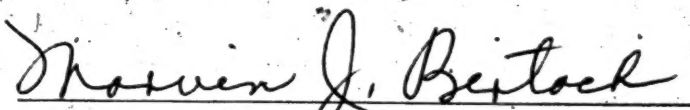
CERTIFICATE OF MAILING

I, MARVIN J. BERTOCH, hereby certify that I mailed, postage prepaid, three copies of the foregoing Reply of Respondents, First Security Bank of Utah, N.A., John B. Gale and Verl Haslem to the Amicus Curiae Brief of the Securities and Exchange Commission, to the attorneys listed below at the addresses below on the 11th day of October, 1971:

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**AFFILIATED UTE CITIZENS OF UTAH ET AL. v.
UNITED STATES ET AL.**

**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE TENTH CIRCUIT**

No. 70-78. Argued October 18, 1971—Decided April 24, 1972

The Ute Partition Act was designed to provide for the partition and distribution of the tribe's assets between the mixed-blood and full-blood members; for termination of federal supervision over the trust and restricted property of mixed-bloods; and for a development program for the full-bloods with a view toward terminating federal supervision of them. In addition to cash and land, the tribe owned oil, gas, and mineral rights (principally oil shale deposits underlying the reservation) and unadjudicated and unliquidated claims against the Government. The Act provided that upon publication of the final membership rolls, the tribal business committee (representing the full-bloods) and the mixed-bloods' "authorized representatives" were to start dividing assets that could be practicably distributed, based upon the relative number of persons in each group, with a further plan to be prepared for distributing the mixed-bloods' assets to individual members. After each mixed-blood had received his distributive share, federal restrictions were to be removed except as to the remaining interest in tribal property. The assets not practicably distributable were to be jointly managed by the committee and the mixed-bloods' representatives. Under the Act, the mixed-bloods, by way of selecting their representatives, organized the Affiliated Ute Citizens (AUC) as an unincorporated association, which, as authorized by the statute, created the Ute Development Corporation (UDC) to manage (jointly with the committee) the oil, gas, and mineral rights and unadjudicated or unliquidated claims against the Government as part of the plan for distributing assets to individual mixed-bloods. UDC issued 10 shares of its stock in the name of each mixed-blood and made an agreement with First Security Bank of Utah (the bank) for the bank to become the UDC stock transfer agent, the bank to hold the stock certificates and issue receipts to the shareholders. Under UDC's articles a mixed-blood shareholder desiring to dispose of his stock prior to August 27, 1964, had to give first-refusal rights to tribe members, absent which no stock sale was valid. A sale could be made to a non-

member only if no member accepted the offer, and the price could be no lower than that offered to members. The UDC certificates were to bear a stamp revealing these conditions, along with a caveat that the certificates did not represent ordinary corporate shares; that the stock's future value could not be determined; and that the stock should be retained for the shareholder's benefit. Upon the sale to a nonmember, the seller was to furnish an affidavit to the reservation superintendent stating the amount he received. The federal trust relationship involving the divided assets contemplated by the Act was terminated by proclamation of the Secretary of the Interior effective August 27, 1961. *AUC Case*. AUC, acting for itself and its 490 mixed-blood members, in April 1968 sued the United States for a pro rata distribution to the individual members of the mixed-bloods' 27% of the mineral estate underlying the reservation and for a determination that AUC and not UDC was entitled to manage that property jointly with the committee. Jurisdiction was asserted under 25 U. S. C. § 345 and 28 U. S. C. §§ 1399 and 2409. The District Court granted the Government's motion to dismiss, and the Court of Appeals affirmed. *Reynos Case*. In February 1965, a group of mixed-bloods (12 of whom were selected as "bellwether plaintiffs" for initial trial purposes) sued the bank, two bank employees (Gale and Haslem) and (under the Tort Claims Act) the United States, charging violations of the Securities Exchange Act of 1934 and the SEC's Rule 10b-5, which prohibits "any device, scheme, or artifice to defraud" in connection with securities transactions. The claimed violations involved plaintiffs' sales of UDC shares in 1963 and 1964 (some made before and some after August 27). The District Court, *inter alia*, found that mixed-bloods had sold 1,387 shares of UDC stock to nonmembers, Haslem buying 50 shares (after August 27, 1964) and Gale 63 (44 before that date and 19 after). The 12 plaintiffs sold 120 shares, Gale buying 10 and Haslem six. Thirty-two other whites bought shares from mixed-bloods during the 1963-1964 period. In 1964-1965 mixed-bloods sold shares at \$300 to \$700 per share, while the price range on transfer between whites was \$500 to \$700. Gale and Haslem received various commissions for their services in connection with transfers of UDC stock from mixed-bloods to nonmembers, solicited contracts for open purchases of UDC stock on bank premises during business hours, and prepared the necessary affidavits and other papers, using, at best, "informal" procedures. The District Court

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concluded that the Government had reason to know of the sales to non-Indians and failed to perform its duty to the mixed-bloods to discourage and prevent the sales; that Gale and Haslem had devised a scheme to acquire for themselves and others UDC shares at less than their fair value; and that the bank had notice of the employees' improper activities. The court found that each of the defendants (with certain exceptions applicable to the Government) was liable to each of the 12 plaintiffs, and assessed damages by using a \$1,500-per-share value for the UDC stock as of the times of the sales. The court reached that figure after taking account of the oil shale deposits underlying the reservation, along with gas, coal, and other minerals; petitioners' remaining interests in an Indian Claims Commission award; unadjudicated claims against the Government; the specific prices for UDC share sales by mixed-bloods to whites; the fact that mixed-bloods (who were under heavy selling pressure) were not so well informed about the stock's potential value as were whites; the influence of Gale's and Haslem's improper activities on selling prices; opinion evidence as to worth above \$700 per share; and other factors. The measure of damages for each seller, the court held, was the difference between the fair value of the UDC shares at the time of sale and the fair value of what the seller received. The Court of Appeals reversed in substantial part, holding that after the 1961 termination the Government owed petitioners no duty in connection with the UDC stock sales; that Gale and Haslem were liable only where they personally purchased shares for their own accounts or for resale to an undisclosed principal at a higher price, but not in other instances, where their actions were held to be only ministerial; and that the bank's liability did not extend beyond Gale's and Haslem's. The District Court's valuation of the UDC stock was held to lack record support, and the proper measure of damages was held to be "the profit made by the defendant on resale" or, absent a resale, "the prevailing market price at the time of the purchase from the plaintiffs." A petition for certiorari covering both the *AUC* case and the *Reyes* case was granted. *Held*:

The AUC Case

1. The *AUC* case was properly dismissed for want of jurisdiction as an unconsented suit against the United States. Pp. 141-143.

(a) Though under 25 U. S. C. § 345, the Government has consented to suits to enforce an Indian's right to an allotment of land, the *AUC*'s claimed interest in the mineral estate has not been made subject to an allotment. Pp. 142-143.

(b) Title 28 U. S. C. §§ 1399 and 2409 are inapplicable, since those provisions confer jurisdiction with respect to partition suits where the United States is a tenant in common or a joint tenant, which is not the situation here. P. 143.

2. The UDC and not the AUC is entitled to manage jointly with the full-bloods the oil, gas, and mineral rights underlying the reservation. Pp. 143-144.

The Reyes Case

3. The Ute Partition Act and the 1961 termination proclamation ended federal supervision over the trust and the mixed-bloods' restricted property, including the UDC shares, and the right of first refusal specified in the UDC corporate articles created no duty on the Government's part to the terminated mixed-bloods seeking to sell their shares. Pp. 149-150.

4. The Court of Appeals correctly determined that Gale and Haslem violated Rule 10b-5 by making misstatements of material fact, namely, that the prevailing market price of the UDC shares was the figure at which their purchases were made, but the court erred in holding that there was no violation of the Rule unless the record disclosed evidence of reliance on the misrepresentations. All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in the making of his decision. Pp. 150-154.

5. The bank's liability is coextensive with that of Gale and Haslem. P. 154.

6. The correct measure of damages under § 28 of the Securities Exchange Act of 1934 is the difference between the fair value of what the mixed-blood seller received for his stock and what he would have received had there been no fraudulent conduct (except where the defendant received more than the seller's actual loss, in which case the defendant's profit is the amount of damages). Pp. 154-155.

7. The District Court's valuation of \$1,500 per UDC share has adequate record support. Pp. 155-156.

431 F. 2d 1349, affirmed; 431 F. 2d 1337, affirmed in part, reversed in part.

BLACKMUN, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, STEWART, WHITE, and MARSHALL, JJ., joined. DOUGLAS, J., filed an opinion concurring in part and dissenting in part, *post*, p. 157. POWELL and REHNQUIST, JJ., took no part in the consideration or decision of the case.

Parker M. Nielson argued the cause and filed briefs for petitioners.

A. Raymond Randolph, Jr., argued the cause for the United States *pro hac vice*. With him on the brief for the United States and brief for the Securities and Exchange Commission as *amicus curiae* for petitioner *Reynos* were *Solicitor General Griswold*, *Assistant Attorney General Kashiwa*, *Edmund B. Clark*, *G. Bradford Cook*, *Walter P. North*, *Theodore Sonde*, and *Richard S. Seltzer*. *Marvin J. Bertoch* argued the cause for respondents *First Security Bank of Utah, N. A., et al.*, and filed a brief for *First Security Bank of Utah*. *Richard Clare Cahoon* filed a brief for respondent *Gale*. *Hardin A. Whitney* filed a brief for respondent *Haslem*.

Briefs of *amici curiae* were filed by *John S. Boyden*, *Stephen G. Boyden*, and *George C. Morris* for the *Ute Indian Tribe of the Uintah and Ouray Reservations et al.*; by *Arthur Lazarus, Jr.*, and *Milton Eisenberg* for the *Association on American Indian Affairs, Inc.*; and by *David H. Getches* and *Wallace L. Duncan* for the *Native American Rights Fund*.

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

These two consolidated cases center in the *Ute Indian Supervision Termination Act of August 27, 1954* (hereafter *Partition Act*), 68 Stat. 868, as amended, 70 Stat. 936 and 76 Stat. 597, 25 U. S. C. §§ 677-677aa; the *Securities Exchange Act of 1934*, 48 Stat. 881, as amended, §§ 3(a)(4) and (5), 10(b) and 15(c)(1), 15 U. S. C. §§ 78c(a)(4) and (5), 78j(b) and 78o(c)(1); the emergence of *Affiliated Ute Citizens of the State of Utah (AUC)*, an unincorporated association, and of *Ute Development Corporation (UDC)*, a Utah corporation; and the alleged victimization of Indian shareholders in their sales of UDC shares.

Background

The Ute Partition Act¹ pertained to the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah. At the time of the Act's adoption the tribe had a membership of about 1,765,² consisting of 439 mixed-bloods³

¹The Act was one of a series of termination statutes enacted primarily in the years 1954-1956. See, for example, the Menominee Indian Termination Act of June 17, 1954, 68 Stat. 250, 25 U. S. C. § 891 *et seq.*; the Klamath Indian Termination of Supervision Act of Aug. 13, 1954, 68 Stat. 718, 25 U. S. C. § 564 *et seq.*; the Act of Aug. 13, 1954, 68 Stat. 724, 25 U. S. C. § 691 *et seq.* (Western Oregon); the Act of Aug. 23, 1954, 68 Stat. 768, 25 U. S. C. § 721 *et seq.* (Alabama and Coushatta); the Act of Sept. 1, 1954, 68 Stat. 1099, 25 U. S. C. § 741 *et seq.* (Paiute); the Act of Aug. 1, 1956, 70 Stat. 893, 25 U. S. C. § 791 *et seq.* (Wyandotte); the Act of Aug. 2, 1956, 70 Stat. 937, 25 U. S. C. § 821 *et seq.* (Peoria); and the Act of Aug. 3, 1956, 70 Stat. 963, 25 U. S. C. § 841 *et seq.* (Ottawa). Others were the Act of Sept. 21, 1959, 73 Stat. 592, 25 U. S. C. § 931 *et seq.* (Catawba), and the Act of Sept. 5, 1962, 76 Stat. 429, 25 U. S. C. § 971 *et seq.* (Ponca).

The termination policy exemplified by these acts is not without its criticism. See the President's Special Message to the Congress on Indian Affairs, July 8, 1970, Public Papers of the Presidents, Richard Nixon, 1970, pp. 564-576.

²S. Rep. No. 1632, 83d Cong., 2d Sess., 5 (1954); H. R. Rep. No. 2493, 83d Cong., 2d Sess., 2 (1954).

³Counsel for the petitioners advised us at oral argument that the term "mixed-blood" is a slur and is offensive and that the preferred description is "terminated Utes." Tr. of Oral Arg. 4. Section 2 of the Act, however, defines as a "full-blood" a member of the tribe "who possesses one-half degree of Ute Indian blood and a total of Indian blood in excess of one-half, excepting those who become mixed-bloods by choice . . ." It defines as a "mixed-blood" a member of the tribe who does not fall within the full-blood class, and one who becomes a mixed-blood by choice. 25 U. S. C. §§ 677a (b) and (c). The provision as to choice is § 4 of the Act, 25 U. S. C. § 677c. Inasmuch as the statute specifically employs the terms "full-blood" and "mixed-blood," we feel compelled, for purposes of consistency and clarity, to do the same. No slur or offense whatsoever is intended.

and 1,326 full-bloods. Section 1 of the Act stated its purpose, namely "to provide for the partition and distribution of the assets of the . . . Tribe . . . between the mixed-blood and full-blood members thereof; for the termination of Federal supervision over the trust, and restricted property, of the mixed-blood members of said tribe; and for a development program for the full-blood members thereof, to assist them in preparing for termination of Federal supervision over their property." 25 U. S. C. § 677. The then-estimated value of the cash, accounts receivable and land owned by the tribe was \$20,702,885.⁴ The tribe possessed additional assets consisting of oil, gas, and mineral rights (principally oil shale deposits underlying the reservation), and unadjudicated and unliquidated claims against the United States.

Section 8 of the Act, 25 U. S. C. § 677g, called for the preparation of the rolls of full-blood members and mixed-blood members, and for the finality of those rolls. Section 5, as amended, 25 U. S. C. § 677d, provided that upon the publication of the final rolls "the tribe shall thereafter consist exclusively of full-blood members," and that mixed-blood members "shall have no interest therein except as otherwise provided" in the Act.

Section 10, 25 U. S. C. § 677i, stated that when the final membership rolls had been published, the tribal business committee, representing the full-bloods, and the "authorized representatives" of the mixed-bloods were to "commence a division of the assets of the tribe that are then susceptible to equitable and practicable

⁴S. Rep. No. 1632, 83d Cong., 2d Sess., 6 (1954); H. R. Rep. No. 2493, 83d Cong., 2d Sess., 4 (1954). The cash was attributable primarily to the tribe's 60% share of the settlement judgment of \$31,000,000 obtained in *Confederated Bands of Ute Indians v. United States*, 117 Ct. Cl. 433 (1950). See the Act of Aug. 21, 1951, § 2, 65 Stat. 194, 25 U. S. C. § 672. The remaining 40% was awarded to the Southern Ute Tribe.

distribution." This was to be based "upon the relative number of persons comprising the final membership roll of each group."⁵ Upon the adoption of a plan of division, the mixed-bloods were to prepare a further plan for the distribution of their group's assets to the individual members. § 13 of the Act, 25 U. S. C. § 677l. After each mixed-blood had received his distributive share, directly or in whole or in part through the device of a corporation or other entity in which he had an interest, federal restrictions were to be removed except as to any remaining interest in tribal property, that is, the unadjudicated or unliquidated claims against the United States, gas, oil, and mineral rights, and other tribal assets not susceptible of equitable and practicable distribution. § 16, 25 U. S. C. § 677o. The Secretary of the Interior then was to issue a proclamation "declaring that the Federal trust relationship to such individual is terminated." § 23, 25 U. S. C. § 677v. Those assets, such as the mineral estate, excepted from the division plans, were to be "managed jointly by the Tribal Business Committee and the authorized representatives of the mixed-blood group." § 10, 25 U. S. C. § 677i.

Section 6 of the Act, 25 U. S. C. § 677e, authorized the mixed-bloods to organize, to adopt a constitution and by-laws, and to provide, by that constitution, for the selection of authorized representatives with power "to take any action that is required by [the Act] to be taken by the mixed-blood members as a group."

Pursuant to this grant of power the mixed-bloods, in 1956, organized AUC as an unincorporated association. AUC's constitution, Art. V, § 1 (b), empowered its board

⁵ The final membership rolls were published April 5, 1956: 21 Fed. Reg. 2208-2220 (1956). The rolls listed 490 mixed-bloods and 1,314 full-bloods, a total of 1,804. The ratio was 27.16186% mixed-bloods and 72.83814% full-bloods.

of directors to delegate to corporations organized in accordance with the Act "such powers and authority as may be necessary or desirable in the accomplishment of the objects and purposes for which said corporations may be so organized."

UDC was incorporated in 1958 with the stated purpose "to manage jointly with the Tribal Business Committee of the full-blood members of the Ute Indian Tribe . . . all unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution to which the mixed-blood members of the said tribe . . . are now, or may hereafter become entitled . . . and to receive the proceeds therefrom and to distribute the same to the stockholders of this corporation"

The formation of UDC was part of the plan formulated by the mixed-bloods for the distribution of assets to the individual members of their group. By a resolution adopted by a 42-5 vote at a special meeting at which a quorum was present and voting, AUC approved the articles of UDC. The Secretary also approved them. In January 1959 the AUC directors by a unanimous vote (5-0) irrevocably delegated authority to UDC—and, indeed, to two other Utah corporations of the mixed-bloods, Antelope-Sheep Range Company and Rock Creek Cattle Range Company, see § 13 of the Act, 25 U. S. C. § 677l (3)—to accomplish the purposes for which they were formed. UDC then issued 10 shares of its capital stock in the name of each mixed-blood Ute, a total of 4,900 shares. UDC and First Security Bank of Utah, N. A. (the bank), executed a written agreement dated December 31, 1958, by which the bank became transfer agent for UDC stock. UDC apparently also decided at this time not to deliver the certificates for its

shares to the shareholders but, instead, to deposit them with the bank; the bank was then to issue receipts to the respective shareholders. Counsel advised the bank that this was "because of some rather unfavorable experiences had in the Indian service with the loss of valuable instruments."

UDC's articles provided that if a mixed-blood shareholder determined to sell or dispose of his UDC stock at any time prior to August 27, 1964, that is, within 10 years from the date of the Partition Act, he was first to offer it to members of the tribe, both mixed-blood and full-blood, in a form approved by the Secretary; that no sale of stock prior to that date was valid unless and until that offer was made; and that if the offer was not accepted by any member of the tribe, the sale to a nonmember could then be made but at a price no lower than that offered to the members.⁶ The articles further provided that all UDC stock certificates shall have stamped thereon a prescribed legend referring to those sale conditions.⁷ The certificates so issued bore that legend. In addition, each certificate had on its face, in red lettering, a warning that the certificate did not represent stock in an ordinary business corporation, that its future value or return could not be determined, and that the stock should not be sold or encumbered by its owner,

⁶ A like right of first refusal with respect to a mixed-blood's disposal of his interest in real estate within 10 years is specified in § 15 of the Act, 25 U. S. C. § 677n.

⁷ "Transfer of this certificate at any time prior to August 27, 1964, to a person not a member of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, as defined in Public Law 671—83rd Congress, approved August 27, 1954, 68 Stat. 868, shall be invalid unless the certificate of the Superintendent of the Uintah and Ouray Reservation is endorsed thereon showing that a prior and proper offer has been made to members of said tribe in accordance with law and the regulations of the Secretary of the Interior."

but should be retained and preserved for the benefit of the shareholder and his family.⁸

The UDC shareholders were advised of the substance of this warning on several occasions after the stock had been issued. UDC's president testified that many responded by saying that their shares were their business and that they could do as they pleased with them.

In August 1960 the Secretary promulgated regulations setting forth the procedure a mixed-blood should follow before effecting a pre-August 27, 1964, sale of his stock to an outsider. 25 Fed. Reg. 7620; 25 CFR §§ 243.1-243.12 (1962). These prescribed for the sale of the stock essentially the same procedure required under §15 of the Act, 25 U. S. C. § 677n, for a mixed-blood's disposal of his interest in real property. 25 CFR § 243.12 (1962). The seller first notified the superintendent of the reservation of the price and terms on which his offer was made. 25 CFR § 243.5 (1962). The superintendent then notified UDC and the business committee of the tribe and posted notices about the reservation. 25 CFR § 243.6 (1962). If no member accepted the offer, the superintendent so informed the offeror, who was then free to sell "at any time within six months thereafter to any person at the same or greater price and upon the same terms and conditions

"WARNING"

"This certificate does not represent stock in an ordinary business corporation. This corporation is organized for the purpose of distributing to the stockholders in the future their respective shares in the proceeds or income from all claims and assets in which the mixed-blood members of the Utah Indian Tribe of the Uintah and Ouray Reservation, Utah have or will have an interest under the provisions of Public Law 671—83rd Congress, approved August 27, 1954, 68 Stat. 868, as amended. The future value of, or return on, this stock cannot be determined. This stock certificate should neither be sold nor encumbered by the owner thereof, but should be retained and preserved for the benefit of the stockholder and the stockholder's family."

upon which it was offered to the members." 25 CFR § 243.8 (1962). Upon the sale to a nonmember, the seller was to furnish an affidavit to the superintendent stating the amount he had received. The superintendent prepared a certificate that the stock had first been offered to members and sent the certificate to the bank. The bank attached it to the stock book.

The termination proclamation, contemplated by § 23 of the Act, 25 U. S. C. § 677v, was issued and published by the Secretary effective at midnight August 27, 1961, 26 Fed. Reg. 8042. This, of course, did not purport to terminate the trust status of the undivided assets. Cf. *Menominee Tribe v. United States*, 391 U. S. 404 (1968).

II

The Present Litigation

A. *The AUC Case*. In April 1968 AUC, on its own behalf and as representative of its 490 mixed-blood members, instituted suit against the United States seeking (1) pro rata distribution to the individual members of the 27.16186%⁹ of the mineral estate underlying the reservation, and (2) a determination that AUC and not UDC is entitled to manage that property jointly with the business committee of the full-bloods. Jurisdiction was asserted under 25 U. S. C. § 345 (authorizing an action against the United States for an Indian allotment claim, see n. 11, *infra*), and under 28 U. S. C. §§ 1399 and 2409 (authorizing a partition action where the United States is a tenant in common or a joint tenant).

The United States moved to dismiss the complaint for want of subject matter jurisdiction and for failure to

⁹ This figure appears to have been misstated as 27.1686% in the complaint. The error was carried forward into the respective opinions of the District Court and of the Court of Appeals. 431 F. 2d 1349, 1350.

state a claim. The District Court granted this motion on both grounds. The Tenth Circuit affirmed. 431 F. 2d 1349 (1970).

B. *The Reyes Case*. In February 1965 Anita R. Reyes and 84 other mixed-bloods sued the bank, two of the bank's employee-officers, John B. Gale and Verl Haslem, and certain automobile dealers,¹⁰ charging violations of the Securities Exchange Act of 1934 and of Rule 10b-5, of the Securities and Exchange Commission. By subsequent amendment to the complaint the United States was added as a party defendant. Jurisdiction was asserted under 28 U. S. C. §§ 1331 and 1346 (b).

The parties selected 12 "bellwether plaintiffs" from among the 85 for purposes of initial trial. These plaintiffs had sold UDC shares to various nonmembers including the defendants Gale and Haslem. The sales took place after the proclamation of termination of the federal trust relationship.

The District Court held the bank and the two officer defendants liable for damages to each of the 12 plaintiffs. It also ruled that the United States possessed, and did not fulfill, a duty to prevent the sales and thus, under the Federal Tort Claims Act, 28 U. S. C. §§ 2671-2680, was liable for damages with respect to sales that had taken place before August 27, 1964. It also ruled, however, that the United States was not liable with respect to sales after that date or to two plaintiffs whom the court found to be contributorily negligent. The court determined that the fair value of the UDC stock at the times of the plaintiffs' sales was \$1,500 per share. The damages against the two individuals and the bank were fixed in the aggregate at \$129,519.56. Damages against the United States were fixed in the aggregate at

¹⁰ The dealers settled and the actions against them have been dismissed.

\$77,947.35. Judgment was entered accordingly under Fed. Rule Civ. Proc. 54 (b).

The several defendants appealed and the 12 plaintiffs whose cases were tried cross-appealed. The Tenth Circuit reversed and remanded. 431 F. 2d 1337 (1970).

C. On the petition of AUC and the 12 plaintiffs this Court granted certiorari in both cases because of the importance of the issues for Indians whose federal supervision is in the course of termination. 402 U. S. 905 (1971).

III

The AUC Case

The two cases, although different, have their roots in the formation of UDC, and it is not inappropriate that the cases were consolidated and are here together.

A. As heretofore noted, AUC in its litigation seeks two things: outright distribution of the mixed-bloods' percentage of the mineral estate, and a determination that AUC is entitled to participate in management with the business committee of the full-bloods.

There is, and can be, no dispute that the United States holds title to the land, including the mineral interest, constituting the Uintah and Ouray Reservation. Prior to the 1954 Act all members of the tribe were the beneficial owners of that mineral interest. The division of the interest between the full-bloods, on the one hand, and the mixed-bloods, on the other, came about by reason of the Act and of the procedures set in motion by the Act. To the extent, therefore, that AUC, by its suit, seeks distribution to the individual mixed-bloods whom it purports to represent, it is necessarily a suit against the United States.

The United States, of course, may not be sued without its consent. *United States v. Sherwood*, 312 U. S. 584, 586 (1941). This long-established principle has been

applied in actions for the possession or conveyance of real estate. *Malone v. Bowdoin*, 369 U. S. 643 (1962). It has been applied to Indian lands the title to which the United States holds in trust. *Minnesota v. United States*, 305 U. S. 382 (1939); *Oregon v. Hitchcock*, 202 U. S. 60, 70 (1906). It has been applied, specifically, in a suit by an Indian who has a beneficial interest in land. *Naganab v. Hitchcock*, 202 U. S. 473 (1906). *Naganab*, therefore, controls the distribution aspect of the AUC case unless the United States has consented to be sued.

The consent, it is claimed, exists in 25 U. S. C. § 345.¹¹ This, however, is an allotment statute. Allotment is a term of art in Indian law. U. S. Dept. of the Interior, Federal Indian Law 774 (1958). It means a selection of specific land awarded to an individual allottee from a common holding. *Reynolds v. United States*, 174 F. 212 (CA8 1909). See the Act of February 8, 1887, 24 Stat. 388, as amended, 25 U. S. C. §§ 331-334. Section 345 authorizes, and provides governmental consent for, only actions for allotment. *First Moon v. White Tail*, 270 U. S. 243 (1926); *Harkins v. United States*, 375 F. 2d 239 (CA 10 1967); *United States v. Preston*, 352 F. 2d 352, 355 (CA9 1965). See *Arenas v. United States*, 322 U. S. 419 (1944).

Although the interest in the mineral estate that AUC seeks to have conveyed pro rata to the individual mixed-

¹¹ Title 25 U. S. C. § 345 reads:

"All persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land . . . or who claim to have been unlawfully denied or excluded from any allotment . . . may commence and prosecute . . . any action . . . in relation to their right thereto in the proper district court of the United States; and said district courts are given jurisdiction to try and determine any action . . . involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty (and in said suit the parties thereto shall be the claimant as plaintiff and the United States as party defendant) . . ."

bloods perhaps could be made the subject of an allotment, it has never been so subjected. Neither is it appurtenant to an allotment. The interest relates to the tribal land of the reservation. It remains tribal property. Further, § 10 of the 1954 Act, 25 U. S. C. § 677i, itself contemplates and provides specifically for the non-allocation of that interest.

We therefore readily conclude that § 345 has no application here. Neither do 28 U. S. C. §§ 1399 and 2409 afford a basis for jurisdiction; they have application only to partition suits where the United States is a tenant in common or a joint tenant. That is not this situation.

The AUC action, therefore, was properly dismissed for want of jurisdiction.

B. AUC's prayer for a determination as to management rights deserves a further word.

The Ute Partition Act was the result of proposals initiated by the tribe itself. See H. R. Rep. No. 2493, 83d Cong., 2d Sess., 2 (1954); S. Rep. No. 1632, 83d Cong., 2d Sess., 7 (1954). The tribe also drafted the Act. *Id.*, at 3 and 7, respectively. It provided for organization by the mixed-bloods and "for the selection of authorized representatives" with power to take any action the Act required to be taken by the mixed-bloods as a group. § 6, 25 U. S. C. § 677e. AUC was formed in 1956 and was the product of this organizational power. Its constitution and bylaws authorize the delegation of necessary or desirable power or authority to corporations formed by the mixed-bloods. UDC was formed by mixed-bloods in 1958 specifically to manage mineral rights and unadjudicated claims against the United States jointly with the business committee. AUC approved UDC's articles and by resolution delegated authority to UDC to act in accord with those articles.

These steps were taken pursuant to the Partition Act.

UDC's formation and structure were contemplated by the Act, and AUC itself created and breathed life and vigor into UDC. All this was within Congress' power. *United States v. Waller*, 243 U. S. 452, 462 (1917); *Tiger v. Western Investment Co.*, 221 U. S. 286 (1911). UDC's legitimacy was further recognized by its anticipatory exemption from federal income tax, under the Act of August 2, 1956, § 3, 70 Stat. 936; by the freeing of its shares from mortgage, levy, attachment, and the like, so long as the shares remained in the ownership of the original shareholder or his heirs or legatees, under the Act of September 25, 1962, 76 Stat. 597, 598; and by the inclusion of UDC by name as an entity to receive the trust fund resulting from the judgment against the United States in favor of the Confederate Bands of Ute Indians, under the Act of August 1, 1967, 81 Stat. 164, as amended, 82 Stat. 171, 25 U. S. C. § 676a.

Clearly, it is UDC and not AUC that is entitled to manage the oil, gas, and mineral rights with the committee of the full-bloods.

IV

The Reyos Case

In this case the 85 plaintiffs sought damages for alleged violations by the defendants, in connection with sales by the plaintiffs of their-UDC shares, of § 10 (b) of the Securities Exchange Act of 1934, 15 U. S. C. § 78j (b),¹²

¹² "Sec. 10. It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

"(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the

and of Rule 10b-5¹³ promulgated thereunder by the Securities and Exchange Commission, 17 CFR § 240.10b-5. The sales in question were effected in 1963 and 1964; some were made before, and some were made after, the expiration of the Secretary's specified 10-year period following the passage of the Ute Partition Act.

The claims center in the facts that the bank, by its agreement with UDC, was the transfer agent for UDC shares; that it had physical possession of all the stock certificates with their specific legend of caution and warning; that, because of the bank's possession, a shareholder's possible contact with, and awareness of, the legend was minimized; that the bank handled the documents implementing the first-refusal procedure; and that the mixed-blood who contemplated the sale of his shares was compelled to deal through the bank.

The District Court made lengthy and meticulously detailed findings of fact. Some are not challenged by any of the parties. Others are challenged. The following, we conclude, are adequately supported by the record:

1. In 1959, after the bank was retained as transfer agent, UDC's attorney wrote the bank advising it that UDC's directors, by formal minute, had instructed him

Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors."

¹³ Rule 10b-5, 17 CFR § 240.10b-5:

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

"(a) To employ any device, scheme, or artifice to defraud,

"(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

"(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security."

to ask the bank "to discourage the sale of stock of the Ute Distribution Corporation by any of its stockholders and to emphasize and stress to the said stockholders the importance of retaining said stock." The letter further stated, "[W]e trust you will impress upon anyone desiring to make a transfer that there is no possible way of determining the true value of this stock."

2. The bank maintained a branch office in Roosevelt, Utah. Many mixed-bloods resided in that area. This was, "among other things for the purpose of facilitating and assisting mixed-bloods in the transfer" of the UDC stock. Defendants Gale and Haslem were the bank's assistant managers at Roosevelt. They were also notaries public.

3. With respect to most of the sales of UDC stock by the 12 plaintiffs to nonmembers of the tribe, either Gale or Haslem prepared and notarized the necessary transfer papers, including signature guarantees and the affidavits of the sellers to the effect that they were receiving not less than the price at which the shares had been offered to members of the tribe. The procedure with respect to the preparation and execution of these affidavits was informal at best. In at least one case the affidavit was signed in blank; in another Gale dissuaded the seller from reading the affidavit before she signed it.

4. Some of the affidavits do not accurately describe the sales to which they relate. Although they state that the sales were for cash, some sellers actually received second-hand automobiles or other tangible property. The superintendent relied on the recitals in the affidavits in preparing his authenticating certificates that were transmitted to the bank as transfer agent.

5. During 1963 and 1964 mixed-bloods sold 1,387 shares of UDC stock. All were sold to nonmembers of the tribe. Haslem purchased 50 of these himself (all after August 27, 1964), and Gale purchased 63 (44

before that date and 19 after). The 113 shares Haslem and Gale purchased constituted $8\frac{1}{3}\%$ of the total sold by mixed-bloods during those two years. The 12 plaintiffs sold 120 shares; of these Gale purchased 10 and Haslem purchased six.¹⁴ They paid cash for the shares they purchased. Thirty-two other white men bought shares from mixed-bloods during the period.

6. In 1964 and 1965 UDC stock was sold by mixed-bloods at prices ranging from \$300 to \$700 per share. Shares were being transferred between whites, however, at prices from \$500 to \$700 per share.

7. Gale and Haslem possessed standing orders from non-Indian buyers. About seven of these were from outside the State. Some of the prospective purchasers maintained deposits at the bank for the purpose of ready consummation of any transaction.

8. The two men received various commissions and gratuities for their services in facilitating the transfer of UDC stock from mixed-bloods to non-Indians. Gale supplied some funds as sales advances to the mixed-blood sellers. He and Haslem solicited contracts for open purchases of UDC stock and did so on bank premises and during business hours.

9. In connection with all this, the bank sought individual accounts from the tribal members.

¹⁴ On or about July 8, 1964, Gale bought five shares from Glen Reed at \$350 per share. He sold them in August for \$530 per share. After August 27, 1964, in three separate transactions, he purchased five shares from Letha Harris Wopsoek. He sold three of these at a higher price; the record is silent as to whether he sold the other two at a price in excess of his cost. On or about August 31, 1964, Haslem bought five shares from Reed at \$400 and resold them immediately. In November 1964 he purchased one share from Joseph Arthur Workman for \$350. He transferred the Workman share to his brother. The record does not indicate Haslem's transfer prices.

10. The United States mails and other instrumentalities of interstate commerce were employed by the bank and by Gale and Haslem in connection with the transfer of the UDC shares.

The District Court concluded:

1. As to the United States: The Government had reason to know that the mixed-bloods were selling UDC shares to non-Indians under circumstances of a doubtful nature. It owed a duty to the mixed-bloods to discourage and prevent those sales. Its failure to perform that duty was the proximate cause of the sales.

2. As to Gale and Haslem: The two men had devised a plan or scheme to acquire, for themselves and others, shares in UDC from mixed-bloods. In violation of their duty to make a fair disclosure, they succeeded in acquiring shares from mixed-bloods for less than fair value.

3. As to the bank: It was put upon notice of the improper activities of its employees, Gale and Haslem, knowingly created the apparent authority on their part, and was responsible for their conduct. Its liability was joint and several with that of Gale and Haslem.

The District Court then ruled that each of the defendants, that is, the United States, the bank, Gale, and Haslem, was liable to each of the 12 plaintiffs (32 transactions involving 122 shares), except that the Government was not liable with respect to any sale after August 27, 1964, or with respect to sales made by plaintiffs Workman and Oran F. Curry because of their knowledge and contributory negligence. Using a \$1,500-per-share value for UDC stock, as of the times of the sales, the above-described judgments for \$129,519.56 and \$77,947.35 were computed and entered.

The Court of Appeals reversed in substantial part. It held:

1. As to the United States: There was no duty on the part of the Government to the petitioners, in connection

with their sales of UDC stock, that continued after the 1961 termination. No form of wardship or of federal trust relationship existed with respect to the shares after that date. Thus, damages under the Tort Claims Act were not to be awarded. 431 F. 2d, at 1340-1343.

2. As to Gale and Haslem: They were liable only in those instances where the employee personally purchased shares for his own account or for resale to an undisclosed principal at a higher price. With respect to the other transactions, the two employees performed essentially ministerial functions related to share transfers and their conduct was not sufficient to incur liability. The court remanded the case on the issue of damages, 431 F. 2d, at 1345-1349.

3. As to the bank: There was no violation of any duty it may have had to plaintiffs by its contract with UDC. This was so despite the facts that Gale and Haslem were active in encouraging a market for the UDC stock and that the bank may have had some indirect benefit by way of increased deposits. 431 F. 2d, at 1343-1345. The bank, however, was liable to the extent Gale and Haslem were liable. 431 F. 2d, at 1346-1347.

In summary, then, the Court of Appeals decided the *Reyes* case in favor of the United States and, in large part, in favor of the bank; held Gale and Haslem personally liable, and the bank also, only with respect to a few sales; and, as to those sales, remanded the case on the issue of damages.

We consider, in turn, the posture of the several defendants.

A. *The United States*. The proclamation of August 26, 1961, was contemplated by § 23 of the Act, 25 U. S. C. § 677v. To the extent the nature of the property so permitted, this marked the fulfillment of the purpose set forth in § 1 of the Act, 25 U. S. C. § 677, namely, the termination of federal supervision over the trust and

restricted property of the mixed-bloods. It stated specifically that the mixed-blood thereupon "shall not be entitled to any of the services performed for Indians because of his status as an Indian." This broad reference obviously included the shares of UDC although the undivided interests in turn held by UDC and shared with the full-bloods remained subject to restrictions after the proclamation. § 16 (a), 25 U. S. C. § 677o (a). The UDC stock itself, however, was free of restriction; as to it, federal termination was complete. Each mixed-blood could sell his shares as he wished and to whom he pleased, subject thereafter only to the restrictions imposed by UDC's own articles. There was no remaining governmental authority over those shares. And without such authority there can be no liability on the part of the United States for failure to restrain a sale.

The petitioners' argument that the right of first refusal created a duty on the part of the Government does not persuade us. This first-refusal right with respect to UDC stock is provided for in the corporation's articles and thus was created by UDC itself. The corporation's action in this respect imposed no duty on the United States. To be sure, the first-refusal right was undoubtedly patterned after the first refusal provided for a period with respect to real estate in § 15 of the Act, 25 U. S. C. § 677n, and the Secretary's regulations were made applicable to the first-refusal right in stock "as far as practicable." 25 CFR § 243.12 (1962). But this parallel created no obligation.

B. Gale and Haslem. Section 10 of the Securities Exchange Act of 1934, 15 U. S. C. § 78j, makes it unlawful "for any person, directly or indirectly," to "employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance in contravention" of any rule "the Commission may prescribe as necessary or appropriate in the public interest

or for the protection of investors." One such rule so prescribed is Rule 10b-5. This declares that, in connection with the purchase or sale of any security, it shall be "unlawful for any person, directly or indirectly," (1) "To employ any device, scheme, or artifice to defraud," (2) "To make any untrue statement of a material fact" or to omit to state a material fact so that the statements made "in the light of the circumstances," are misleading, and (3) "To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person."

These proscriptions, by statute and rule, are broad and, by repeated use of the word "any," are obviously meant to be inclusive. The Court has said that the 1934 Act and its companion legislative enactments¹⁵ embrace a "fundamental purpose . . . to substitute a philosophy of full disclosure for the philosophy of *caveat emptor* and thus to achieve a high standard of business ethics in the securities industry." *SEC v. Capital Gains Research Bureau*, 375 U. S. 180, 186 (1963). In the case just cited the Court noted that Congress intended securities legislation enacted for the purpose of avoiding frauds to be construed "not technically and restrictively, but flexibly to effectuate its remedial purposes." *Id.*, at 195. This was recently said once again in *Superintendent of Insurance v. Bankers Life & Casualty Co.*, 404 U. S. 6, 12 (1971).

In the light of the congressional philosophy and purpose, so clearly emphasized by the Court, we conclude that the Court of Appeals viewed too narrowly the activities of defendants Gale and Haslem. We would

¹⁵ The Securities Act of 1933, 48 Stat. 74, as amended, 15 U. S. C. § 77a *et seq.*; the Public Utility Holding Company Act of 1935, 49 Stat. 838, as amended, 15 U. S. C. § 79 *et seq.*; the Trust Indenture Act of 1939, 53 Stat. 1149, as amended, 15 U. S. C. § 77aaa *et seq.*; and the Investment Company Act of 1940, 54 Stat. 789, as amended, 15 U. S. C. § 80a-1 *et seq.*

agree that if the two men and the employer bank had functioned merely as a transfer agent, there would have been no duty of disclosure here. But, as the Court of Appeals itself observed, the record shows that Gale and Haslem "were active in encouraging a market for the UDC stock among non-Indians." 431 F. 2d, at 1345. They did this by soliciting and accepting standing orders from non-Indians. They and the bank, as a result, received increased deposits because of the development of this market. The two men also received commissions and gratuities from the expectant non-Indian buyers. The men, and hence the bank, as the Court found, were "entirely familiar with the prevailing market for the shares at all material times." 431 F. 2d, at 1347. The bank itself had acknowledged, by letter to AUC in January 1958, that "it would be our duty to see that these transfers were properly made" and that, with respect to the sale of shares, "the bank would be acting for the individual stockholders." The mixed-blood sellers "considered these defendants to be familiar with the market for the shares of stock and relied upon them when they desired to sell their shares." 431 F. 2d, at 1347.

Clearly, the Court of Appeals was right to the extent that it held that the two employees had violated Rule 10b-5; in the instances specified in that holding the record reveals a misstatement of a material fact, within the proscription of Rule 10b-5 (2), namely, that the prevailing market price of the UDC shares was the figure at which their purchases were made.

We conclude, however, that the Court of Appeals erred when it held that there was no violation of the Rule unless the record disclosed evidence of reliance on material fact misrepresentations by Gale and Haslem. 431 F. 2d, at 1348. We do not read Rule 10b-5 so restrictively. To be sure, the second subparagraph of the rule

specifies the making of an untrue statement of a material fact and the omission to state a material fact. The first and third subparagraphs are not so restricted. These defendants' activities, outlined above, disclose, within the very language of one or the other of those subparagraphs, a "course of business" or a "device, scheme, or artifice" that operated as a fraud upon the Indian sellers. *SEC v. Bankers Life & Casualty Co.*, *supra*. This is so because the defendants devised a plan and induced the mixed-blood holders of UDC stock to dispose of their shares without disclosing to them material facts that reasonably could have been expected to influence their decisions to sell. The individual defendants, in a distinct sense, were market makers, not only for their personal purchases constituting $8\frac{1}{3}\%$ of the sales, but for the other sales their activities produced. This being so, they possessed the affirmative duty under the Rule to disclose this fact to the mixed-blood sellers. See *Chasins v. Smith, Barney & Co.*, 438 F. 2d 1167 (CA2 1970). It is no answer to urge that, as to some of the petitioners, these defendants may have made no positive representation or recommendation. The defendants may not stand mute while they facilitate the mixed-bloods' sales to those seeking to profit in the non-Indian market the defendants had developed and encouraged and with which they were fully familiar. The sellers had the right to know that the defendants were in a position to gain financially from their sales and that their shares were selling for a higher price in that market. Cf., in contrast, § 18 (a) of the Act, 15 U. S. C. § 78r (a), and § 11 (a) of the Securities Act of 1933, 15 U. S. C. § 77k (a).

Under the circumstances of this case, involving primarily a failure to disclose, positive proof of reliance is not a prerequisite to recovery. All that is necessary is that the facts withheld be material in the sense that a

reasonable investor might have considered them important in the making of this decision. See *Mills v. Electric Auto-Lite Co.*, 396 U. S. 375, 384 (1970); *SEC v. Texas Gulf Sulphur Co.*, 401 F.2d 833, 849 (CA2 1968), cert. denied *sub nom. Coates v. SEC*, 394 U. S. 976 (1969); 6 L. Loss, Securities Regulation 3876-3880 (1969 Supp. to 2d ed. of Vol. 3); A. Broinberg, Securities Law, Fraud—SEC Rule 10b-5, §§ 2.6 and 8.6 (1967). This obligation to disclose and this withholding of a material fact establish the requisite element of causation in fact. *Chasins v. Smith, Barney & Co.*, 438 F. 2d, at 1172.

Gale and Haslem engaged in more than ministerial functions. Their acts were clearly within the reach of Rule 10b-5. And they were acts performed when they were obligated to act on behalf of the mixed-blood sellers.¹⁶

C. *The Bank.* The liability of the bank, of course, is coextensive with that of Gale and Haslem.

V

Damages

A. The District Court determined that the measure of damages for each seller was the difference between the fair value of the UDC shares at the time of his sale and the fair value of what the seller received, including any amount paid to him in settlement by the automobile dealers. The Court of Appeals held that the measure was "the profit made by the defendant on resale" or, if no resale was made or if the resale was not at arm's length, was "the prevailing market price at the time of the purchase from the plaintiffs." 431 F. 2d, at 1348-1349.

¹⁶ Liability here, of course, is not predicated on any broker or dealer concept under § 15 (c) (1) of the Act, 15 U. S. C. § 78c (c) (1). A bank is excluded from the respective definitions of those terms in §§ 3 (a) (4) and (5), 15 U. S. C. §§ 78c (a) (4) and (5).

In our view, the correct measure of damages under § 28 of the Act, 15 U. S. C. § 78bb (a), is the difference between the fair value of all that the mixed-blood seller received and the fair value of what he would have received had there been no fraudulent conduct, see *Myzel v. Fields*, 386 F. 2d 718, 748 (CA8 1967), cert. denied, 390 U. S. 951 (1968), except for the situation where the defendant received more than the seller's actual loss. In the latter case damages are the amount of the defendant's profit. See *Janigan v. Taylor*, 344 F. 2d 781, 786 (CA1 1965), cert. denied, 382 U. S. 879 (1965).

B. The District Court, as has been noted, arrived at a value for the UDC stock of \$1,500 per share. The Court of Appeals concluded that this valuation was not substantiated by the record. The petitioners argue for a value in the neighborhood of \$28,000 per share, a figure concededly dependent in large part on an estimate of the ultimate worth of oil shale.

We agree with both the District Court and the Court of Appeals that the \$28,000 figure is unrealistic and speculative. On the other hand, reasonable inferences may be drawn and the District Court, as the trier of fact on this record, is not restricted to actual sale prices in a market so isolated and so thin as this one. See generally *Bigelow v. RKO Radio Pictures, Inc.*, 327 U. S. 251, 264 (1946); *Harry Alter Co. v. Chrysler Corp.*, 285 F. 2d 903, 907 (CA7 1960); *O'Malley v. Ames*, 197 F. 2d 256 (CA8 1952).

In arriving at the \$1,500 figure the District Court considered the existence of extensive oil shale deposits on the reservation; the possession by those deposits of substantial present value and of great potential value; the presence of gas, coal, and other minerals; the administrative cost deposit retained by the United States with respect to each member of the tribe; each petitioner's remaining interest in the 1965 award by the Indian

Claims Commission; the existence of claims against the United States not yet fully adjudicated; and the specific prices at which UDC shares were sold by mixed-bloods and between white persons. The court noted that prices paid for the shares were somewhat influenced by the improper activities of Gale and Haslem; by the excess of sellers over buyers; by the fact the typical Indian seller was not so well informed about the potential value of the stock as was the typical non-Indian buyer; by the fact that the Indian seller was under heavy economic pressure to sell; by opinion evidence as to worth in excess of \$700 per share; and by the fact that some portion of the depressant factors in the market was attributable to the defendants. On the other hand, the court noted that not all the market's depressant factors were so attributable to the defendants and that the tribe itself, despite the opportunity so to do, had declined to purchase UDC shares at prices ranging from \$350 to \$700.

The court then expressed the belief that the problem was not to determine the ultimate worth of the undivided mineral interest underlying the shares or to be governed solely by the sale prices. It concluded that on the preponderance of the evidence the stock was worth \$1,500 per share at the times of the petitioners' respective sales.

In the light of all this, and on balance, we find ourselves in agreement with the District Court, and in disagreement with the Court of Appeals, and we conclude that the District Court's \$1,500 valuation has sufficient support in the record.

The judgment of the Court of Appeals in the *AUC* case is affirmed. The judgment of the Court of Appeals in the *Reynos* case is affirmed insofar as it concerns the United States; insofar as it concerns the bank and the individual defendants, that judgment is affirmed in part and is reversed in part, as hereinabove set forth, and the case is remanded for further proceedings. Costs are

allowed the individual petitioners as against the bank and the individual defendants.

It is so ordered.

MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST took no part in the consideration or decision of this case.

MR. JUSTICE DOUGLAS, concurring in part and dissenting in part.

I join in the Court's opinion and judgment as to the individual and corporate respondents. I would go further, however, and also hold that the United States has waived its sovereign immunity to petitioners' claims.

Petitioners are an unincorporated association of mixed-blood Utes and individuals of that group. They sought damages, in the District Court, for fraudulent securities transactions, for negligence by agents of the Federal Government, and for the deprivation of statutory rights granted them by Congress. The District Court awarded damages on the first two claims, but dismissed the third for want of jurisdiction and for failure to state a claim. The Court of Appeals reversed the two damage awards and affirmed the dismissal of the third action. 431 F. 2d 1337, 1349 (CA10 1970).

In the Ute Indian Supervision Termination Act of 1954, Congress sought

"to provide for the partition and distribution of the assets of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah between the mixed-blood and full-blood members thereof; for the termination of Federal supervision over the trust, and restricted property, of the mixed-blood members of said tribe; and for a development program for the full-blood members thereof, to assist them in preparing for termination of Federal supervision over their property." 25 U. S. C. § 677.

That the various property interests in the reservation were to be treated differently is evidenced by the Committee Reports accompanying this legislation:

"An essential provision of the proposed legislation is the division between the two groups, on the basis of their relative numbers, of all tribal assets, *except oil, gas, and mineral rights, and unadjudicated claims against the United States. These undivided assets will continue to be owned and administered jointly by the two groups.* The responsibility for making this division is on the Indians themselves, but if they fail to agree within 12 months after the rolls are completed, the Secretary of the Interior is authorized to make the division." S. Rep. No. 1632, 83d Cong., 2d Sess., 6 (1954) (emphasis added).

Accord, H. R. Rep. No. 2493, 83d Cong., 2d Sess. (1954).

Involved here is the mineral estate in the Reservation lands. Because these "gas, oil, and mineral rights" were "not susceptible of equitable and practicable distribution" among the individual Indians, they were to be "managed jointly by the Tribal Business Committee [of the full-blood Utes] and the authorized representatives of the mixed-blood group." 25 U. S. C. § 677i. The benefits were to be shared proportionately according to the relative numbers of each group on their final membership rolls. *Ibid.*

Congress set forth an explicit procedure for the selection of the "authorized representatives" of the mixed-blood Utes who, with the Tribal Business Committee, were to have managerial powers over the mineral estate in the reservation. Central to this selection was the requirement for "a majority vote of the adult mixed-blood members of the tribe at a special election authorized and called by the Secretary" of the Interior. 25 U. S. C. § 677e. The petitioner Affiliated Ute Citizens was created under this procedure on April 4, 1956. Two

years later, the Ute Distribution Corp. was formed and there lies the root of the present litigation.

The Ute Distribution Corp. was not chartered according to the guidelines mandated by Congress. Rather than following the requirement for a majority vote of the mixed-blood members, it was created by the five board members of Affiliated Ute. Approval of its articles of incorporation was by a vote of only 42 to 5—far short of the majority of the 490 mixed-blood Utes required by 25 U. S. C. § 677e. After incorporation, 10 shares of stock were issued to each of the mixed-blood Utes. Despite the flaws in Ute Distribution Corp.'s formation, the Bureau of Indian Affairs treated it, and not Affiliated Ute Citizens, as the "authorized representative." Payments for mineral rights were thus made to Ute Distribution which, in turn, passed them on to its shareholders as dividends.

Because the Bureau of Indian Affairs viewed the transfer of mineral interests to Ute Distribution as one to the authorized representative, cf. 25 U. S. C. § 677o (a), the restrictions on the transfer of individual property were removed and the federal trust relationship purportedly was terminated. 25 U. S. C. § 677t; 26 Fed. Reg. 8042. It was upon this basis that the courts below held that the individual mixed-blood Utes and the Affiliated Utes no longer had cognizable interests in the mineral estate of the reservation.

Even if the federal trust relationship was terminated as to individual property interests, it does not follow that the trust relationship was also terminated as to the group interest in the mineral rights. The United States continued to owe significant obligations and duties with regard to these mineral interests. See 25 U. S. C. §§ 677i, 677n, and 677o. See Berger, Indian Mineral Interest—A Potential for Economic Advancement, 10 Ariz. L. Rev. 675 (1968). It was to obtain the enjoyment of the

statutory benefits and to redress their injury that petitioners brought this action against the United States.

The waiver of sovereign immunity for claims relating to land allotments first appeared in an amendment to the Indian Appropriations Act of 1894, 28 Stat. 305, as amended, 25 U. S. C. § 345:

"All persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress . . . or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States"

By a further amendment in 1901, Congress made explicit what had previously been only implicit: that it intended to allow allotment claimants to bring actions against "the United States as party defendant." Act of February 6, 1901, § 1, 31 Stat. 760. See H. R. Rep. No. 1714, 56th Cong., 1st Sess. (1900); S. Rep. No. 2040, 56th Cong., 2d Sess. (1901).

Affiliated Ute Citizens argued that their asserted right to a portion of the mineral estate of the reservation was an "allotment or . . . parcel of land" which they had been unlawfully denied and that they were therefore able to bring this action against the United States under § 345. See, e. g., *United States v. Pierce*, 235 F. 2d 885 (CA9 1956); *Gerard v. United States*, 167 F. 2d 951 (CA9 1948). The courts below rejected this view, with the Court of Appeals saying:

"This section of the statute is obviously intended to provide relief to the Indians entitled to possession of allotments and similar interests. The cases and

statutory law have ascribed to the word 'allotment' a well recognized meaning. The nature of the interest sought to be protected and secured does not resemble that described in the statute." 431 F. 2d, at 1350.

We owe to the Indians a beneficent interpretation of remedial legislation designed to right past wrongs. *United States v. Kagama*; 118 U. S. 375, 384-385. The Court of Appeals, however, gave only a limited interpretation to this waiver of sovereign immunity against Indians' claims. The Solicitor General likewise argues for a limited application of this waiver and would apply it only to claims concerning "a tract of land set aside out of a common holding and awarded to an individual allottee."¹

"But in the Government's dealings with the Indians the rule is exactly the contrary. The construction, instead of being strict, is liberal; doubtful expressions, instead of being resolved in favor of the United States, are to be resolved in favor of a weak and defenseless people, who are wards of the nation, and dependent wholly upon its protection and good faith. This rule of construction has been recognized, without exception, for more than a hundred years" *Choate v. Trapp*, 224 U. S. 665, 675.

See also *Alaska Pacific Fisheries v. United States*, 248 U. S. 78, 79; U. S. Dept. of the Interior, Federal Indian Law 565-566. (1958).

¹ A similar argument was made in *United States v. Pierce*, 235 F. 2d 885, 888 (CA9 1956):

"The United States contends that the jurisdictional prerequisite for any action under [§ 345] . . . is the existence of a specific allotment section which has been *unlawfully denied* by the Secretary of the Interior" The court rejected this argument saying that it was "based upon an unreasonable limitation as to the purpose of the statute," *ibid.*, and went on to sustain the Indians' claims to income from the land.

The waiver of sovereign immunity should not be so limited as the Solicitor General and the courts below suggest. The 1894 Act, now codified in 25 U. S. C. § 345, was plainly intended to give Indians a means of enforcing their rights to governmental grants of interests in realty.² To be sure, the section was enacted in an era during which these grants usually took the form of individual possessory interests in realty, *Gilbert & Taylor, Indian Land Questions*, 8 Ariz. L. Rev. 102, 112 (1966); but that should not prevent this remedial section from applying to new forms of interests in mineral rights or to other forms of property.³

Nor does the plain language of § 345 suggest a contrary result. It speaks of an "allotment or any parcel of land."⁴ Certainly the modern, conventional way of allotting mineral rights is through fractional interests created by contracts or through stock interests in corporations to which those allotments are transferred. If

² *First Moon v. White Tail*, 270 U. S. 243, relied upon by the Solicitor General, is not to the contrary because it dealt with the transfer of property occasioned by an Indian's death. Such transfers were removed from the scope of § 345 and "entrusted to the exclusive cognizance of the Secretary of the Interior by the Act of June 25, 1910, c. 431, 36 Stat. 855 . . ." 270 U. S., at 244.

³ In *Scholder v. United States*, 428 F. 2d 1123, 1129 (CA9 1970), for example, the court noted "that section [345] is not limited to actions seeking to compel the issuance of an allotment in the first instance. It serves also to protect 'the interests and rights of the Indian in his allotment or patent after he has acquired it.'" The court then held that challenges to liens placed upon Indian lands fell within the jurisdictional scope of § 345. Certainly the divestiture of interests in lands, alleged here, should not be entitled to a lesser degree of protection than the imposition of a lien.

⁴ Section 345 also requires that the property interest be one derived "under any law of Congress" or "by virtue of any Act of Congress." E. g., *Naganab v. Hitchcock*, 202 U. S. 473; *Oregon v. Hitchcock*, 202 U. S. 60. In the present case, the rights asserted are those derived from the Ute Indian Supervision Termination Act of 1954.

Congress has waived sovereign immunity for claims relating to fee interests in realty, it surely could not have intended that formal requirements of the art of conveyancy destroy that waiver of immunity for lesser interests in realty. Particularly is that so where, as here, the lesser interest seems to have been granted through an error by the Bureau of Indian Affairs.

The limited retention of sovereign immunity in the Ute termination act further supports petitioners' claims. Title 25 U. S. C. § 677i provides that the "partition [of tribal assets] shall give rise to no cause of action against the United States." The Committee Reports and the statute itself indicate that the mineral interests were not to be the subject of partition as the word is used in that Act. S. Rep. No. 1632, 83d Cong., 2d Sess., 6 (1954); H. R. Rep. No. 2493, 83d Cong., 2d Sess. (1954); 25 U. S. C. § 677i. Thus, the failure of Congress to extend sovereign immunity to the unpartitioned mineral interests here in issue strongly suggests that immunity has been waived as to these claims. Moreover, the only other immunity provision of the Act, 25 U. S. C. § 677h, applies only where there has been consent by the authorized representatives of the mixed-blood group which was necessarily absent because of the defect in the creation of the Ute Distribution Corporation.